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ABSTRACT

This report includes information derived from a survey of 24 states on out of state placement of students with disabilities. Survey questions address: (1) whether local education agencies (LEAs) are notified by agencies outside of education when an out of state placement for purposes other than education is immanent; (2) whether LEAs are given information about where the child is going to be placed; (3) which local agency is responsible for monitoring the appropriateness of the special education programs for these children; (4) whether the state uses the services of the Inter-state Compact to monitor the adequacy of special education services; and (5) whether the state is satisfied with the current monitoring system. Results from the survey indicate LEAs in six states are not notified when an out of state placement by agencies outside of education for purposes other than education is immanent, and that six states are not satisfied with the current monitoring system. State recommendations include requiring LEA verification in advance of placements, on-site reviews on a cyclical basis, and more ownership by the LEAs regarding the education of these students. Question responses are summarized in the first seven pages, followed by appendices containing photocopied material on policies and procedures in Kansas, Maryland, Washington, West Virginia, and Mississippi, respectively. Because the material in the appendices has been copied selectively from many different sources, the pagination appears on the surface to be erratic. (CR)

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ED 419 340

MID-SOUTH
REGIONAL RESOURCE CENTER

Survey of Students with Disabilities in Out of State Placements: A Sample of States

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

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Compiled by:
Teresa Blythe

Revised
August 2, 1996

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REVISED
August 2, 1996

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Question 1: **In your state, are LEAs notified when an out of state placement for purposes other than education is immanent by agencies outside of education?**

	YES	NO
ALABAMA	X (In the only situation the survey respondent was aware of, the ALSDE contracted with the County Department of Human Resources office that placed the student out of state to pay for the out of state education cost.)	
ALASKA	Alaska maintains a policy of NO out of state placements.	
COLORADO		
FLORIDA	X	
IDAHO		X
ILLINOIS	X Sometimes	X
INDIANA	X Sometimes	X Not always
IOWA	X	
KANSAS		X
MARYLAND	X (See enclosed LCC/SCC Policies and Procedures Manual pp. 19-21, 27, 34, and 50-52).	
MICHIGAN		X
MISSISSIPPI	In Mississippi, the Department of Human Services applies directly to Mississippi Department of Education for funding of educational services fo a child who is under the legal guardianship of the state and for whom no foster parents are available. Only if appropriate services are unavailable in the state are placements made out of state. At present, the MS Department of Education is funding educational services for only a few out-of-state placements.	
MISSOURI		X
NEBRASKA		X
NEW HAMPSHIRE	X	
NEW MEXICO	New Mexico State Department of Education does not collect data in this area. The LEAs collect this type of data.	
OHIO	X	
PENNSYLVANIA		X Sometimes
SOUTH CAROLINA	X	
UTAH	X (Survey respondent said to their knowledge, no special students are served out of state)	
VERMONT	X	
VIRGINIA	X (The LEA should be a part of the residential placement decision process required under Virginia's Comprehensive Services Act).	
WASHINGTON		X
WEST VIRGINIA	X (Technically, yes. The WV interagency agreement requires notification; however, this doesn't occur consistently)	
WISCONSIN	X	

Question 2: Are LEAs given information about where the child is going to be placed?

	YES	NO
ALABAMA		X
ALASKA	Alaska maintains a policy of NO out of state placements.	
COLORADO	X	
FLORIDA	X	
IOWA	X	
IDAHO		X
ILLINOIS	X Sometimes	X
INDIANA	X Sometimes	X Not always
KANSAS		X
MARYLAND	X (See enclosed LCC/SCC Policies and Procedures Manual pp. 43-44.	
MICHIGAN		X
MISSISSIPPI	In Mississippi, the Department of Human Services applies directly to Mississippi Department of Education for funding of educational services fo a child who is under the legal guardianship of the state and for whom no foster parents are available. Only if appropriate services are unavailable in the state are placements made out of state. At present, the MS Department of Education is funding educational services for only a few out-of-state placements.	
MISSOURI		X
NEBRASKA		X
NEW HAMPSHIRE	X	
NEW MEXICO	New Mexico State Department of Education does not collect data in this area. The LEAs collect this type of data.	
OHIO	X	
PENNSYLVANIA		X Some-times
SOUTH CAROLINA	X	
UTAH	X	
VERMONT	X	
VIRGINIA	X	
WASHINGTON		X
WEST VIRGINIA	X (Technically, yes. Those LEAs who are notified (see question #1) are given information regarding location of placement.	
WISCONSIN	X	

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Question 3: **What local agency is responsible for monitoring the appropriateness of the special education programs for these children, including the IEP?**

	What local agency is responsible for monitoring?	DESK REVIEW INVOLVED?	ON-SITE VISIT INVOLVED?
ALABAMA		OPTIONAL	OPTIONAL
ALASKA	Alaska maintains a policy of NO out of state placements.		
COLORADO	District – Colorado holds local districts responsible for their "out-of-district" placements. The SEA monitors all local "alternative" placement facilities.	REQUIRED	REQUIRED
FLORIDA	State where facility is located.		
IDAHO		DON'T KNOW	DON'T KNOW
ILLINOIS	LEA		
INDIANA		REQUIRED	OPTIONAL
IOWA	Resident district	REQUIRED	OPTIONAL
KANSAS	State Education Agency	REQUIRED	REQUIRED
MARYLAND	Local Education Agency/ State Education Agency	See enclosed LCC/SCC Policies and Procedures Manual pp. 62-64.	
MICHIGAN		DON'T KNOW	DON'T KNOW
MISSISSIPPI	In Mississippi, the Dept. of Human Services applies directly to MS Dept. of Education for funding of educational services fo a child who is under the legal guardianship of the state &for whom no foster parents are available. Only if appropriate services are unavailable in the state are placements made out of state. At present, the MS Dept. of Education is funding educational services for only a few out-of-state placements.		
MISSOURI	Not sure; believe only review is at the state level.	DON'T KNOW	DON'T KNOW
NEBRASKA	Not one identified	Receiving out of state education program must establish approved rates with Nebraska; one piece being approval/recognition from state program.	
NEW HAMPSHIRE	LEA where student lives; rights of these students do not differ from any other educationally disabled student as per New Hampshire standards and IDEA.		
NEW MEXICO	New Mexico State Department of Education does not collect data in this area. The LEAs collect this type of data.		
OHIO	LEA where facility is located.		
PENNSYLVANIA	School district and intermediate unit	OPTIONAL	OPTIONAL
SOUTH CAROLINA	SEA determines compliance LEA determines appropriateness		
UTAH	Responsibility is with the LEA where the facility is located. This is an in-state policy.		
VERMONT	District of residence. • If parents reside in VT it is the district(s) of parental residence. • If parents are deceased, all rights have been terminated or parents have moved out of state, then the Commissioner of Education determines residency.	REQUIRED	OPTIONAL
VIRGINIA	Local school division responsible for IEP implementation.		

Question 3: What local agency is responsible for monitoring the appropriateness of the special education programs for these children, including the IEP?

	What local agency is responsible for monitoring?	DESK REVIEW INVOLVED?	ON-SITE VISIT INVOLVED?
WASHINGTON	LEA - only if LEA involved in placement decision and/or is financially supporting placement.	LEAs are only permitted to support placement out of state if it is at an approved (by State Board of Education) agency.	
WEST VIRGINIA	Local education agencies	REQUIRED	OPTIONAL
WISCONSIN	Agency in which child resided immediately prior to placement.		

Question 4: **Does your state use the services of the Inter-state Compact to monitor the adequacy of special education services?**

	YES	NO
ALABAMA	?	
ALASKA	Alaska maintains a policy of NO out of state placements.	
COLORADO	X	
FLORIDA		X
IDAHO		X
ILLINOIS		X
INDIANA		X
IOWA		X (If question of payment, use Inter-state Compact)
KANSAS		X
MARYLAND		X
MICHIGAN		X
MISSISSIPPI		X
MISSOURI	The survey respondent believed that it is only for the care of the child.	
NEBRASKA	The Nebraska Department of Social Services utilizes Inter-state Compact for placements.	
NEW HAMPSHIRE		X
NEW MEXICO	New Mexico State Department of Education does not collect data in this area. The LEAs collect this type of data.	
OHIO		X
PENNSYLVANIA		X
SOUTH CAROLINA		X
UTAH	N/A	
VERMONT		X (The survey respondent was not aware that was an option. It is their understanding that it is not an option in Vermont).
VIRGINIA	X (All out of state placements must be processed through Inter-state Compact Office.	
WASHINGTON		X
WEST VIRGINIA		X
WISCONSIN		X

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Question 5: Are you satisfied that this current monitoring system gets at the information you need efficiently? If not, please specify what procedures you would like to change.

	YES	NO
ALABAMA	?	
ALASKA	Alaska maintains a policy of NO out of state placements.	
COLORADO	X	
FLORIDA	X	
IDAHO	N/A	
ILLINOIS	X	
INDIANA	X	
IOWA	X (Question can be answered better by districts & intermediate units since they are responsible for monitoring).	
KANSAS	X	
MARYLAND	(1) If co-funded children are discharged, that information is not always conveyed to the LEA in a timely manner. (2) LEA may not have been asked to determine a child's eligibility for special education services prior to placement. An IEP may be developed at out of state site with no LEA involvement. (3) Information on emergency placements are not always conveyed to the LEA in a timely manner.	
MICHIGAN		X
MISSISSIPPI		X
MISSOURI	The survey respondent was not fully informed of what procedures are in place so it was difficult to respond. Very few Missouri students are placed out of state.	
NEBRASKA		X (No formal procedures exist. Would appreciate having a copy of what other states have developed).
NEW HAMPSHIRE	X	
NEW MEXICO	New Mexico State Department of Education does not collect data in this area. The LEAs collect this type of data.	
OHIO		X
PENNSYLVANIA		
SOUTH CAROLINA	X	
UTAH	X	
VERMONT	It is dependent on the LEA & the residential care facility. Inter-state Compact could require more education information & communication.	
VIRGINIA	This is LEA responsibility. The SEA does collect some data through our special education data system.	
WASHINGTON		X • LEA verification in advance of placement. • If LEA support, then need to develop scope of LEA monitoring responsibility.
WEST VIRGINIA		X • On site reviews on a cyclical basis at least every four years. • More ownership (accountability) by the LEAs regarding the education of these students.
WISCONSIN	X	

Question 6: Our policies and procedures are attached to this form: [OPTIONAL]

	YES	NO
ALABAMA		X
ALASKA		X
COLORADO		X
FLORIDA		X
IDAHO		X
ILLINOIS		X
INDIANA		X
IOWA		X
KANSAS	X The Kansas State Education Agency would follow the guidance contained in the attached OSEP clarification letter to McAllister dated June 9, 1994.	
MARYLAND	X 1) Annotated Code of Maryland, Article 49D, Sections 13-20.1 Clarifying the role of the State Interagency Coordinating Council (SCC), Local Interagency Coordinating Council (LCC), and out of state placement of children. 2) Governor's Subcabinet for Children, Youth and Families: Subcabinet Vision Statement (2/96) and Local Management Boards (LMBs) (2/96). 3) Copies of various sections of the LCC/SCC Policies and Procedures Manual (9/94) pertaining to areas as noted in survey response.	
MICHIGAN		X
MISSISSIPPI	X	
MISSOURI		X
NEBRASKA		X
NEW HAMPSHIRE		X
NEW MEXICO	New Mexico State Department of Education does not collect data in this area. The LEAs collect this type of data.	
OHIO		X
PENNSYLVANIA		X
SOUTH CAROLINA		X
UTAH		X
VERMONT		X
VIRGINIA		X
WASHINGTON	X	
WEST VIRGINIA	There are generic statements in WV state policy; however, they don't have policies/procedures related specifically tot his issue.	X
WISCONSIN		X

MID-SOUTH
REGIONAL RESOURCE CENTER

Survey of Students with Disabilities in Out of State Placements: A Sample of States

APPENDIX A:

Kansas Policies & Procedures Relating to Students with Disabilities in Out of State Placements

K5—

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 9 1994

Out of State
Placements

Mr. John S. McAllister
Assistant Attorney General
Education Division
Office of the Attorney General
36 South State Street, Eleventh Floor
Salt Lake City, Utah 84111

Dear Mr. McAllister:

This is in response to your letter to Dr. Judy Schrag, former Director of the Office of Special Education Programs (OSEP), requesting clarification of the obligations of the Utah State Office of Education (USOE) and local educational agencies (LEAs) within Utah to provide educational services to non-resident students with disabilities placed in private residential schools in Utah by State social service or welfare agencies outside of Utah. We apologize for the delay in responding.

Your letter seeks clarification of the applicable requirements of two Federal statutes--Part B of the Individuals with Disabilities Education Act (Part B) and Section 504 of the Rehabilitation Act of 1973 (Section 504). The responses that follow address the requirements of Part B, the Federal Statute administered by the Office of Special Education Programs (OSEP). The Office for Civil Rights (OCR), the branch of the Department that enforces Section 504 has informed me that its policy concerning the issue which you have raised is consistent with the approach under Part B described in this letter. Specifically, under both Part B and Section 504, the placing state is responsible for ensuring FAPE for children it places in another state. If you would like further clarification on the requirements of Section 504, please contact:

Jean P. Peelen
Director
Elementary and Secondary Education Policy Division
Office for Civil Rights
U.S. Department of Education
330 C Street, SW Room 5046
Washington, D.C. 20202-1320

The pertinent portions of your questions that relate to the requirements of Part B and OSEP's responses follow.

1. Where does responsibility lie for providing a free appropriate public education in the situation where an out of State public agency (not a local education agency) places a

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

> child (whose parents remain in that state) across state boundaries into Utah, but retains: 1)custody, 2) power to return the child to the placing state at any time, 3) responsibility for cost of residential placement and 4) authority over residential circumstances?

Your letter indicates that the out-of-state agency retains custody and authority to control the child's residential circumstances, including the power to return the child to his/her home at any time, but that the other State's agency refuses to use its funds for the child's education. Your letter also states that the local school district of residency in the placing State responds that no one contacted school officials to inform them of the child's out-of-State placement and that since that school district can provide the student with FAPE, it is not responsible for education costs of the out-of-State placement.

Under Part B, each State and its local school districts must make a free appropriate public education (FAPE) available to all children with specified disabilities in mandated age ranges residing within the State. 20 U.S.C. §12412(2). It is residence that creates the duty under the statute and regulations, not the location of the child or school. As interpreted by this Office, a child is a resident of the State which: (1) their parent or guardian is a resident of; or (2) the child is a ward of. Therefore, under Part B, when a child with a disability is placed or referred by a State social service, social welfare, or similar State agency, whether for education or treatment reasons, at a private school or facility, whether within the State or outside of the State, the SEA in the State in which the child resides is responsible for ensuring that FAPE is made available to the child during the course of the child's placement at the out-of-State facility. See, 34 CFR §§300.121 and 300.600. Under the circumstances presented by your inquiry, it appears that the children at issue are residents of the placing State. The movement of a child from one placement in one jurisdiction to another placement in another jurisdiction does not, in most instances, change a child's district of residence or shift the responsibility for providing FAPE from one public agency to another. Thus, the placing State is obligated to make FAPE available to the children prompting the inquiry.

> 2. Is it a violation of a child with disabilities' right under IDEA (20 U.S.C. §1400 et seq.), . . . for a state agency to place a child with disabilities across state lines with no notice to education officials in the placing state and with no provision for education funding from that state?

Part B requires an SEA to ensure that it exercises general supervisory authority over all educational programs for children with disabilities administered within the State, including each program administered by any other public agency. As stated in the Note following 34 CFR §300.600, there are a number of acceptable options which a State may adopt to satisfy this Part B requirement for a single line of responsibility for the education of children with disabilities. Thus, the State statutes and/or regulations, or other options utilized by a State to establish a single line of responsibility for the education of children with disabilities are relevant in determining whether a placing agency must inform the SEA in the State in which that agency is located that a child with a disability residing in the placing State has been placed at an out-of-State residential facility. However, a state agency violates the requirements of Part B if it fails to ensure the provision of FAPE to a child with a disability that it places in a residential setting in another state.

> 3. In the event a child is placed across state lines, which agency of the placing state, if any, is responsible for ensuring that the placement is consistent with IDEA . . . requirements? . . .

In all cases, the SEA has ultimate responsibility for ensuring that children with disabilities residing within the State, including children placed by other State agencies in out-of-State residential facilities, receive FAPE. In carrying out its responsibility under Part B to ensure that children with disabilities residing within the State receive FAPE, an SEA may choose from a number of options as to how it will ensure a single line of responsibility for the education of children with disabilities residing within that State, i.e., interagency agreements, administrative directives, or State law, regulations, or policy mandates.

> 4. Is it a violation of IDEA (20 U.S.C. §1400 et seq.) . . . for Utah to refuse educational services to an out-of-State non-resident child placed across State lines (while residential custody, control, and funding are retained by the placing state), on the basis that such provision is contrary to Utah's residency law?

Under Part B, since the SEA of the State placing a child in an out-of-State facility bears ultimate responsibility for ensuring that the child receives FAPE, neither the Utah SEA, or LEA where the residential facility is located, has any responsibility for serving children whose residences are out-of-State. The SEA in the placing State could contract with the LEA in which the residential facility is located to provide services to the child and the SEA of the placing State could agree to assume financial responsibility for payment for required services. However, under Part B, the SEA in the placing State continues to be responsible for ensuring that FAPE is provided to the child.

I hope that the above information is helpful. If I can be of further assistance, please let me know.

Sincerely,

Thomas Hehir/pr

Thomas Hehir
Director
Office of Special Education Programs

OFFICE OF
THE ATTORNEY GENERAL

STATE OF UTAH

R. PAUL VAN DAM - ATTORNEY GENERAL

36 SOUTH STATE STREET, ELEVENTH FLOOR • SALT LAKE CITY, UTAH 84111 • TELEPHONE 801 538 1200 • FAX 801 538 1216

JOSEPH E. TESCH
CHIEF DEPUTY ATTORNEY GENERAL

May 6, 1992

Out of State
Placements

Dr. Judy Shrag, Director
Office of Special Education Programs
330 C Street, S.W.
Mary Switzer Building
Washington, D.C. 20202

Re: Responsibility for the Education of Non-resident Disabled Children Placed Across State Lines

Dear Dr. Shrag:

We would like to inquire about a rule or policy which might help us resolve a continuing problem regarding placement of non-resident children by other state entities across state lines into Utah.

The problem is that children with disabilities in the custody of another state's social service, welfare or other agency are placed in a private Utah residential facility with no provisions made for their education. The out of state agency retains custody and authority to control the child's residential circumstances including the power to return him to his home at any time, but the agency refuses to use its funds for the child's education.

The local school district of residence in the placing state responds that no one contacted school officials and, in any event, the district can provide a free appropriate public education in the district and therefore it is not responsible for education costs of the out of state placement.

Such circumstance inevitably results in non-resident children placed in Utah with no education assistance from their state or district of residency, but subject to out of state control and authority. Utah law prohibits state funds from being used for non-resident children so the burden falls on the local Utah school district to either pay for the child's entire education from local funds or to refuse to provide any education service. In a period of financial exigency without sufficient funding for education of its own children, it appears

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inappropriate to dilute Utah's resources by providing for non-resident children.

We are aware of the federal law which requires a plan for providing education services for all children with disabilities residing in the state. See Individuals with Disabilities Education Act (IDEA, 20 U.S.C. § 1412 (2)(c).) We also recognize regulations which appear to hold the state education agency in the placing state "responsible for ensuring that the child has available a free appropriate public education" (34 C.F.R. 300, Appendix C, Notice of Interpretation, Questions 1 and 2.) We understand federal law and regulations under IDEA to mean that no matter which state agency places a child, the state education agency of the placing state is ultimately responsible for ensuring a child's free appropriate public education including evaluation, development of an individualized education program (IEP), placement and provision for education funding.

However, when we have inquired of the out of state placing agencies, they have declined financial responsibility. Some cite 34 C.F.R. part 104, Appendix A, paragraph 23, pursuant to Section 504 of the Rehabilitation Act of 1973, in support of their position that merely placing the child across state lines shifts the entire education responsibility to Utah despite the facts that such child's parents remain in the placing state, and custody, authority, and residential funding are retained by the out of state placing agency.

34 C.F.R. part 104, Appendix A may set certain standards for dealing with children with disabilities, but we do not see any particular application to placement across state lines. That appendix should not be used to absolve an out of state placing agency from educational responsibility when such agency retains custody, authority and residential responsibility. Nor do we believe that paragraph 23 requires Utah to provide a free appropriate public education to a child placed across state lines by an agency beyond Utah control and with parents too remote to be involved in the IEP process.

We would be most appreciative if you would help us resolve this problem by responding to the following questions:

1. Where does responsibility lie for providing a free appropriate public education in the situation where an out of state public agency (not a local education agency) places a child (whose parents remain in that state) across state boundaries into Utah, but retains: 1) custody, 2) power to return the child to

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the placing state at any time, 3) responsibility for cost of residential placement, and 4) authority over residential circumstances?

2. Is it a violation of a child with disabilities' rights under IDEA (20 U.S.C. § 1400 et seq.), or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) for a state agency to place a child with disabilities across state lines with no notice to education officials in the placing state and with no provision for education funding from that state?

3. In the event a child is placed across state lines, which agency of the placing state, if any, is responsible for ensuring that the placement is consistent with IDEA and Section 504 requirements? Under Section 504, is it not the responsibility of the state of residence, where a child's parents still reside, to provide for a free appropriate education even though the student may be placed out of state by a state agency?

4. Is it a violation of IDEA (20 U.S.C § 1400 et seq.) or Section 504 (29 U.S.C. § 794) for Utah to refuse educational services to an out of state non-resident child placed across state lines (while residential custody, control, and funding are retained by the placing state), on the basis that such provision is contrary to Utah's residency law?

We will eagerly await your response and such other direction or advice you may wish to offer. If you have any questions or need further clarification of our inquiry, please do not hesitate to let us know.

Very truly yours,

John McAllister

JOHN S. McALLISTER
Assistant Attorney General
Education Division

JSM/bk

cc: Tom Irvin
Larry Ringer
Steve Kukic
Mae Taylor

OFFICE OF
THE ATTORNEY GENERAL

1896

STATE OF UTAH

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JOSEPH E. TESCH
CHIEF DEPUTY ATTORNEY GENERAL

July 29, 1992

Dr. Judy Shrag, Director
Office of Special Education Programs
330 C Street, S.W.
Mary Switzer Building
Washington, D.C. 20202

Re: Disabled Children Placed Across State Lines

Dear Dr. Shrag:

Nearly three months ago we inquired about a rule or policy which would address the continuing problem of other states placing disabled children across state boundaries into Utah without our state having prior notice or an opportunity to deal with the problem (see copy of our May 6, 1992, letter enclosed).

Because our schools commence within the next month, and since we have had no response to our letter, we now wish to inquire whether your response is imminent or whether there is any interest in exploring this situation.

We would really appreciate your advice. In its absence and with our time constraints we have little alternative but to recommend to our local districts that they carefully exercise their discretion under Utah's residency law.

We would be pleased to hear from you.

Very truly yours,

John McAllister

JOHN S. McALLISTER
Assistant Attorney General
Education Division

JSM/bk
Enclosure
cc: Tom Irvine
Larry Ringer
Steve Kucik
Mae Taylor
Richard Mecham

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Survey of Students with Disabilities in Out of State Placements: A Sample of States

APPENDIX B:

Maryland Policies & Procedures Relating to Students with Disabilities in Out of State Placements

MD

(e) *Local lead agencies.* — Local lead agencies shall be established or designated in each county and Baltimore City to administer the interagency system of early intervention services in their subdivision, under the direction of the Office for Children, Youth, and Families.

(f) *Local interagency coordinating councils.* — (1) In each county, the county executive or county commissioners, as appropriate, or in Baltimore City, the Mayor shall establish a local interagency coordinating council to advise and assist the local lead agency in the development and implementation of policies that constitute the local early intervention system.

(2) In each county, the county executive or county commissioners, as appropriate, or in Baltimore City, the Mayor may designate the local planning entity to serve as the local interagency coordinating council or establish the local interagency coordinating council as a part of that entity. Where a local planning entity and a local interagency coordinating council coexist, they shall work cooperatively.

(g) *Rules and regulations.* — The Office for Children, Youth, and Families shall adopt rules and regulations necessary to carry out the provisions of this section. (1990, ch. 419, § 1; 1993, ch. 556.)

Effect of amendments. — The 1993 amendment, effective Oct. 1, 1993, added (f) and redesignated former (f) as present (g).

Editor's note. — Section 2, ch. 556, Acts 1993, provides that "on or before December 31, 1993 the Subcabinet for Children, Youth, and Families shall develop a plan for a system for sharing client information among agencies as necessary to ensure efficient and effective service delivery. The plan shall address issues related to confidentiality and parental consent to ensure appropriate safeguards are provided. The Subcabinet shall report, on or before December 31, 1993, to the Senate Finance Committee and the Environmental Matters Committee on the plan developed under this section. The Subcabinet may not implement the system for sharing client information developed under this Section unless authorized by the General Assembly by legislation."

SERVICES TO CHILDREN WITH DISABILITIES

§ 13. Definitions.

(a) *In general.* — In this subtitle the following words have the meanings indicated.

(b) *Council.* — "Council" means the State Coordinating Council.

(c) *Local coordinating council.* — "Local coordinating council" means a local coordinating council for residential placement of children with disabilities. (1987, ch. 572; 1988, ch. 6, § 1; 1990, ch. 419, § 2; 1993, ch. 556.)

Effect of amendments. — The 1993 amendment, effective Oct. 1, 1993, deleted "for Residential Placement of Handicapped Children" following "Coordinating Council" in (b); and substituted "children with disabilities" for "handicapped children" in (c). The 1993 amendment also substituted "Children With Disabilities" for "Handicapped Children" in the subtitle heading preceding this section.

Editor's note. — Section 2, ch. 419, Acts 1990, effective July 1, 1990, transferred former §§ 9-1501 through 9-1508 of the State Government Article to be present §§ 13 through 20 of this article.

Additionally, ch. 419 transferred the subtitle heading from former Title 9, Subtitle 15 to be the subtitle heading preceding § 13 of this article, and substituted "Services to Handicapped Children" for "Subtitle 15. Services to Handicapped Children."

Section 2, ch. 556, Acts 1993, provides that "on or before December 31, 1993 the Subcabinet for Children, Youth, and Families shall develop a plan for a system for sharing

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client information among agencies as necessary to ensure efficient and effective service delivery. The plan shall address issues related to confidentiality and parental consent to ensure appropriate safeguards are provided. The Subcabinet shall report, on or before December 31, 1993, to the Senate Finance Committee and the Environmental Matters Committee on the plan developed under this section. The Subcabinet may not implement the system for sharing client information developed under this Section unless authorized by the General Assembly by legislation."

§ 14. Council established.

There is a State Coordinating Council within the Office for Children, Youth, and Families in the Executive Branch of the government. (1987, ch. 572; 1990, ch. 419, §§ 1, 2; 1993, ch. 556.)

Effect of amendments. — The 1993 amendment, effective Oct. 1, 1993, deleted "for Residential Placement of Handicapped Children" following "Coordinating Council."

Editor's note. — Section 2, ch. 556, Acts 1993, provides that "on or before December 31, 1993 the Subcabinet for Children, Youth, and Families shall develop a plan for a system for sharing client information among agencies as necessary to ensure efficient and effective service delivery. The plan shall address issues related to confidentiality and parental consent to ensure appropriate safeguards are provided. The Subcabinet shall report, on or before December 31, 1993, to the Senate Finance Committee and the Environmental Matters Committee on the plan developed under this section. The Subcabinet may not implement the system for sharing client information developed under this Section unless authorized by the General Assembly by legislation."

§ 15. Members; chairman; staff support.

(a) *Members.* — The members of the Council are:

(1) The Secretary of Health and Mental Hygiene or the Secretary's designee;

(2) The Secretary of Human Resources or the Secretary's designee;

(3) The State Superintendent of Schools or the Superintendent's designee;

(4) The Director of the Governor's Office for Individuals with Disabilities, as a nonvoting, ex officio member;

(5) The Special Secretary of the Office for Children, Youth, and Families or the Special Secretary's designee; and

(6) The Secretary of the Department of Juvenile Services or the Secretary's designee.

(b) *Chairman.* — (1) There is a chairman of the Council who shall serve a term of 12 months in 5-year cycles of rotation as provided in this subsection.

(2) The Secretary of Health and Mental Hygiene is the chairman of the Council for a term of 12 consecutive months beginning on July 1, 1987. The Secretary of Human Resources shall succeed the Secretary of Health and Mental Hygiene as chairman for a term of 12 consecutive months, the Secretary of the Department of Juvenile Services shall succeed the Secretary of Human Resources for a term of 12 consecutive months, the State Superintendent of Schools shall succeed the Secretary of the Department of Juvenile Services for a term of 12 consecutive months and the Special Secretary of the Office for Children, Youth, and Families shall succeed the State Superintendent of Schools for a term of 12 consecutive months.

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(3) After the initial 5-year cycle of rotation of the office of chairman, each voting member shall serve as chairman for a 12-month term in the order set forth in paragraph (2) of this subsection.

(c) *Staff support.* — Staff support for the Council shall be provided by the Office for Children, Youth, and Families within the Executive Branch of the government. (1987, ch. 572; 1988, ch. 6, § 1; ch. 68; 1989, ch. 539, § 7; 1990, ch. 419, §§ 1, 2; 1993, ch. 556.)

Effect of amendments. — The 1993 amendment, effective Oct. 1, 1993, substituted "Individuals with Disabilities" for "Handicapped Individuals" in (a) (4).

Editor's note. — Section 2, ch. 556, Acts 1993, provides that "on or before December 31, 1993 the Subcabinet for Children, Youth, and Families shall develop a plan for a system for sharing client information among agencies as necessary to ensure efficient and effective service delivery. The plan shall address issues related to confidentiality and parental consent to ensure appropriate safeguards are provided. The Subcabinet shall report, on or before December 31, 1993, to the Senate Finance Committee and the Environmental Matters Committee on the plan developed under this section. The Subcabinet may not implement the system for sharing client information developed under this Section unless authorized by the General Assembly by legislation."

§ 16. Council's duties; local coordinating councils.

The Council shall:

(1) Establish a local coordinating council for residential placement of children with disabilities in each county, and Baltimore City, in the State;

(2) Develop procedures for the operation of local coordinating councils;

(3) Periodically review the residential placement decision procedures of the local coordinating councils for children with disabilities;

(4) Receive and review recommendations for the individual placement of children with disabilities in residential programs submitted by the local coordinating councils;

(5) Assure that the local coordinating councils consider all alternatives for the provision of services to children with disabilities and their families in the community;

(6) Plan and coordinate with the local coordinating councils concerning the adequate provision of multiple agency services to children with disabilities requiring residential placement;

(7) In cooperation with the local coordinating councils, monitor the services being provided to children placed in residential programs;

(8) Establish and maintain a multiple agency information system to assure agency accountability and provide State service planning capability;

(9) Coordinate such evaluations of residential facilities for children with disabilities as are required by statute; and

(10) Make recommendations to the appropriate secretary on the development of regulations to carry out the provisions of this subtitle. (1987, ch. 572; 1990, ch. 419, § 2; 1993, ch. 556.)

Effect of amendments. — The 1993 amendment, effective Oct. 1, 1993, substituted "children with disabilities" for "handicapped children" in (1), (4), (5), (6) and (9); and added "for children with disabilities" at the end of (3).

Editor's note. — Section 2, ch. 556, Acts

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1993, provides that "on or before December 31, 1993 the Subcabinet for Children, Youth, and Families shall develop a plan for a system for sharing client information among agencies as necessary to ensure efficient and effective service delivery. The plan shall address issues related to confidentiality and parental consent to ensure appropriate safeguards are provided. The Subcabinet shall report, on or before December 31, 1993, to the Senate Finance Committee and the Environmental Matters Committee on the plan developed under this section. The Subcabinet may not implement the system for sharing client information developed under this Section unless authorized by the General Assembly by legislation."

§ 17. Local coordinating councils — Composition.

Each local coordinating council shall include at least 1 representative from:

(1) The Mental Hygiene Administration;

(2) The Department of Juvenile Services;

(3) The Developmental Disabilities Administration;

(4) The Alcohol and Drug Abuse Administration;

(5) The local board of education;

(6) The local health department; and

(7) The local department of social services. (1987, ch. 572; 1988, ch. 6, § 1; ch. 68; 1989, ch. 539, § 7; 1990, ch. 419, §§ 1, 2.)

§ 18. Same — Terms of members.

The Council shall establish the terms of the members of the local coordinating councils. (1987, ch. 572; 1990, ch. 419, § 2.)

§ 19. Care for residential placement of children with disabilities.

(a) *Duties of the Council and the local coordinating councils.* — The Council and the local coordinating councils shall develop and implement plans of care for the residential placement of children with disabilities in the State.

(b) *Duties of the local coordinating councils.* — A local coordinating council shall:

(1) Accept placement referrals from the agencies represented on the local coordinating council;

(2) Decide what type of placement is needed by the child with disabilities who is referred for placement;

(3) Provide an interagency plan of care for children with disabilities who need residential placements;

(4) Submit recommended plans of care to the Council; and

(5) Assist the agency primarily responsible for a disabled child's care in implementing and monitoring residential placements. (1987, ch. 572; 1988, ch. 68; 1990, ch. 419, § 2; 1993, ch. 556.)

Effect of amendments. — The 1993 amendment, effective Oct. 1, 1993, substituted "children with disabilities" for "handicapped children" in (a) and (b) (3); substituted "child with disabilities" for "handicapped child" in (b) (2); and substituted "disabled" for "handicapped" in (b) (5).

Editor's note. — Section 2, ch. 556, Acts 1993, provides that "on or before December 31, 1993 the Subcabinet for Children, Youth, and Families shall develop a plan for a system for sharing client information among agencies as necessary to ensure efficient and effective service delivery. The plan shall address issues re-

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lated to confidentiality and parental consent to ensure appropriate safeguards are provided. The Subcabinet shall report, on or before December 31, 1993, to the Senate Finance Committee and the Environmental Matters Committee on the plan developed under this section. The Subcabinet may not implement the system for sharing client information developed under this Section unless authorized by the General Assembly by legislation."

Out-of-State Placement of Children

§ 19.1. Placement of children with special needs.

Transferred.

Editor's note. — Section 21, ch. 3, Acts 1994, approved Feb. 28, 1994, and effective from date of enactment, transferred this section to be § 20.1 of this article.

§ 20. Meetings of the Council or local coordinating councils; notice of decision, and right of appeal.

(a) *When parent, guardian or counsel should attend.* — A parent or guardian of a child and, if the child is represented by counsel, the child's attorney may attend any local coordinating council meeting or meeting of the Council where the purpose of the meeting is to discuss the child's residential placement.

(b) *Notice to parent, guardian or counsel of meeting.* — (1) The local coordinating council shall notify each parent or guardian of the child and, if the child is represented by counsel, the child's court appointed attorney of any meeting the local coordinating council plans to hold to discuss the child's residential placement, at least 10 calendar days before the meeting date, of the date, time, and location of the meeting.

(2) The Council shall notify each parent or guardian of the child and, if the child is represented by counsel, the child's court appointed attorney of any meeting the Council plans to hold to discuss the child's residential placement, at least 10 calendar days before the meeting date, of the date, time and location of the meeting.

(c) *Notice to parent, guardian or counsel of decision and of right to appeal.* — The Council and the local coordinating council shall notify each parent or guardian of the child and, if the child is represented by counsel, the child's attorney in writing of:

(1) Any decision it makes concerning the child's residential placement; and

(2) The right of the parent or guardian or the child's attorney to appeal any decision made by the Council or the local coordinating council concerning the child's residential placement. (1987, ch. 572; 1988, ch. 652; 1990, ch. 419, § 2.)

Cross references. — See Editor's note to § 13 of this article.

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(a) *Policy.* — The General Assembly declares that it is the policy of this State:

(1) To the extent that funds are available, to provide for and encourage the development of a continuum of quality education, treatment, and residential services for the children of this State;

(2) To serve children:

(i) In their homes; or

(ii) In the least restrictive setting most appropriate to their individual needs;

(3) That unless the State has determined that the individual needs of a special needs child cannot be met through additional support to the nonresidential school, home, foster home, alternative living unit, or group home, the State may not fund the placement of a child with special needs in a more restrictive setting; and

(4) To prevent the unnecessary placement of children with special needs in out-of-state institutions.

(b) *Plan for return to State.* — (1) By December 31, 1992, the Office for Children, Youth, and Families, in collaboration with the Committee appointed under paragraph (4) of this subsection, shall develop a plan for returning children with special needs in current out-of-state placements to Maryland and preventing future out-of-state placements.

(2) Except as provided in subsections (b) (3) and (d) of this section, the plan shall have a goal of returning all children with special needs from out-of-state placements by July 1, 1997.

(3) The plan developed by the Office for Children, Youth, and Families and the Committee under paragraph (4) of this subsection shall include:

(i) How the State and local planning entities under § 11 of this article will develop the range and quality of services necessary for children with special needs to receive quality services within the State;

(ii) Any needed changes in rate-setting and licensing;

(iii) Flexible funding strategies and resources for the development of a broad range of services to assist in returning children with special needs from out-of-state placements;

(iv) The amount and sources of funds needed to implement the plan; and

(v) Any other information or data necessary to carry out the purposes of this section.

(4) (i) The Special Secretary of the Office for Children, Youth, and Families, through the Subcabinet, shall appoint a Committee to develop the plan.

(ii) The Committee shall include:

1. The Secretary of Health and Mental Hygiene;
2. The Secretary of Human Resources;
3. The Secretary of Juvenile Services;
4. The Secretary of Budget and Fiscal Planning;
5. The State Superintendent of Schools; and
6. A representative of local education agencies.

(5) The Special Secretary shall serve as chairperson of the Committee.

(6) In developing the plan, the Committee shall consult with the following:

(i) Representatives from local planning entities designated under § 11 of this article;

(ii) Representatives from each of the following:

1. Local governments;
2. Local departments of social services; and
3. Local health departments;

(iii) Parents of children with special needs;

(iv) Private residential and day services providers;

(v) Child advocacy organizations;

(vi) Former consumers of special needs services who are at least 18 years of age;

(vii) A representative of the Health Resources Planning Commission; and

(viii) Any other person the Special Secretary deems necessary.

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(c) *Out-of-state placements.* — (1) Until the plan developed under subsection (b) of this section is fully implemented, a local or State agency may approve a new out-of-state placement of any child only if:

(i) The out-of-state placement is closer in distance to the child's home than an alternative in-State placement;

(ii) An equally appropriate individualized in-State program is not available for the child, for up to 100% of the average cost per placement for all appropriate out-of-state programs for which application would be made on behalf of the child; or

(iii) The child is currently in detention pursuant to a court order.

(2) At the time of application to the State Coordinating Council for an out-of-state placement, the referring agency, in consultation with the local coordinating council as defined in § 13 of this article, shall begin to plan for the child's return.

(d) *Flexible use of funds.* — Each department's funds available for out-of-home care may be used flexibly for less restrictive care, in accordance with the plan developed under subsection (c) of this section.

(e) *Regulations.* — (1) The Office for Children, Youth, and Families shall adopt regulations necessary to carry out the provisions of this section.

(2) The regulations shall be developed in collaboration with the Committee created under subsection (c) of this section and shall include:

(i) Schedules for returning children from out-of-state placements;

(ii) Schedules for preventing out-of-state placements; and

(iii) Any allowable exceptions.

(f) *Implementation of plan.* — The Special Secretary for Children, Youth, and Families, the Secretaries of Health and Mental Hygiene, Human Resources, Juvenile Services, and Budget and Fiscal Planning, and the State Superintendent of Schools shall implement the plan developed under this section. (1992, ch. 264; 1993, ch. 556; 1994, ch. 3, § 21.)

Effect of amendments. — The 1993 amendment, effective Oct. 1, 1993, reenacted (b) without change; and added (f).

Editor's note. — Section 2, ch. 264, Acts 1992, provides that the act shall take effect July 1, 1992.

Section 2, ch. 556, Acts 1993, provides that "on or before December 31, 1993 the Subcabinet for Children, Youth, and Families shall develop a plan for a system for sharing client information among agencies as necessary to ensure efficient and effective service delivery. The plan shall address issues related to confidentiality and parental consent to ensure appropriate safeguards are provided. The Subcabinet shall report, on or before December 31, 1993, to the Senate Finance Committee and the Environmental Matters Committee on the plan developed under this section. The Subcabinet may not implement the system for sharing client information developed under this Section unless authorized by the General Assembly by legislation."

Editor's note.

Section 21, ch. 3, Acts 1994, approved Feb. 28, 1994, and effective from date of enactment, transferred former § 19.1 of this article to be present § 20.1 of this article.

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GOVERNOR'S SUBCABINET FOR CHILDREN, YOUTH AND FAMILIES

SUBCABINET VISION STATEMENT

Maryland's vision is to build partnerships with the larger community which strengthen the capacity of families to adequately nurture and care for children by providing a quality education, safe environments and the availability of good paying, family supporting jobs.

SUBCABINET MISSION STATEMENT

Maryland's mission is to build partnerships with communities to ensure effective, coordinated, outcome based family-oriented services which emphasize prevention and early intervention and are culturally responsive to the needs, strengths and priorities of families, in order to support the achievement and well-being of children.

SYSTEMS REFORM INITIATIVE

The Systems Reform Initiative was created in July, 1988 to restructure the human services delivery system on an interagency basis, so that supports to Maryland's children and families build their capacity to be self-sufficient, safe and healthy.

The Reform Initiative is built upon five principles of the Governor's Subcabinet:

1. **Increase local authority, through Local Management Boards, to plan, implement and monitor services on an interagency basis.**

2. **Maximize family centered, home and community based services which include interagency case management and a single point of access to multiple agency services.**

3. **Shift resources to prevention and early intervention efforts.**

4. **Ensure that the interagency budget for children and family services reflects the priorities of the Subcabinet and Local Management Boards and that agency budgets have the flexibility to address common priorities.**

5. **Ensure system wide oversight, monitoring, collaboration and accountability through the Subcabinet.**

The Reform Initiative has three broad goals:

1. To change the way we provide supports to children and families so that services are

   - family focused [illegible]
   - comprehensive, timely and responsive
   - directed toward enhancing family strengths
   - home and community based
   - culturally competent
   - intensive, if needed

2. To change the way we make decisions

   - from single agency to interagency decision-making
   - using the state-level Subcabinet and the Local Management Boards as collaborative governance bodies
   - using data and outcomes as the basis for decisions

3. To change the way we fund services

   - redirecting funds from the out-of-home end of the service continuum to services that support families
   - maximizing federal funding opportunities
   - providing incentives for the development of community-based services
   - developing interagency budgets and funding pools for family preservation services
   - promoting more local control over and accountability for the allocation of resources within state guidelines
   - making funding decisions based upon setting goals and meeting outcomes

For more information, contact:

Systems Reform Initiative
(410) 225-4160

GOVERNOR'S OFFICE FOR CHILDREN, YOUTH AND FAMILIES

Parris N. Glendening, Governor *Linda S. Thompson, DrPH, Special Secretary*

2/96

GOVERNOR'S SUBCABINET FOR CHILDREN, YOUTH AND FAMILIES

LOCAL MANAGEMENT BOARDS

Definition

A Local Management Board (LMB) is a collaborative entity responsible for interagency planning; goal-setting; allocating resources; developing, implementing and monitoring interagency services to children and their families.

- An LMB is appointed by county government as a quasi-public, not-for-profit agency or as a unit of county government.
- Membership on the LMB includes both public and private representation. Public representatives include education, social services, juvenile justice, health, mental health core service agencies and local government who have the authority to obligate agency resources. Private representation can comprise up to 49% of the Board and may include citizens, private providers, advocacy groups, parents and other child serving organizations.

Statutory Mandate

- Within guidelines developed by the Special Secretary of the Office for Children, Youth and Families, each local jurisdiction shall establish or designate a local management board to ensure the implementation of a local, interagency service delivery system for children, youth and families. (Md. Ann. Code, Art. 49D, Sec. 11)

Current Status

- Local Management Boards (LMBs) are established in Baltimore City and in Allegany, Anne Arundel, Calvert, Cecil, Garrett, Harford, Montgomery, Prince George's, and Worcester Counties. One regional LMB has been established for Dorchester, Kent, Talbot and Queen Anne's Counties. These counties provide interagency intensive family preservation services and services that are designed to return youth from out-of-state placements or divert youth from entering into out-of-state placements, called return/diversion services. Carroll, Frederick and Washington Counties will provide return/diversion services only for Fiscal Year 1996.
- Start-up agreements to establish Local Management Boards have been signed with Baltimore, Caroline, Charles, Howard, St. Mary's, Somerset and Wicomico Counties.
- LMBs develop community plans for providing comprehensive interagency services within guidelines established by the Subcabinet for Children, Youth and Families. Currently, LMBs are, at minimum, responsible for interagency services to return and divert children from out-of-state placements and to prevent out-of-home placements with intensive family preservation services. Many LMBs are responsible for implementation of the Maryland Infant and Toddler program and the development of Mental Health Core Services Agencies.

For further information, please contact: Heather Callister, (410) 225-4160

GOVERNOR'S OFFICE FOR CHILDREN, YOUTH AND FAMILIES

Parris N. Glendening, Governor *Linda S. Thompson, DrPH, Special Secretary*

2/96

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8. Coordinates Interagency Evaluation Team

An interagency evaluation team has been established to make site visits of out-of-state residential facilities and monitor the facilities for compliance with applicable residential placement laws, regulations and standards. This team visits facilities at least once every three years and provides a report to the SCC. The team may also conduct unannounced visits to facilities at the direction of the SCC.

2.03 SCC APPROVAL AND FUNDING RESPONSIBILITIES

The SCC has the responsibility to approve or disapprove recommended residential placements made by Local Coordinating Councils, subject to the role of the Admission, Review and Dismissal committee in special education cases as set forth in section 3.17 of this manual. The SCC authorizes placements out-of-state. As of July 1, 1993, for placements in-state, Local Coordinating Councils may place children according to the agency-specific guidelines outlined in section 3.09. The SCC reviews these placements but does not pre-authorize them.

The SCC members have designated representatives who meet weekly as a group for the purpose of reviewing LCC referrals and making the funding assignments for those referrals which are approved. This group is called the Program Review Committee (PRC), which is comprised of representatives from the following agencies:

Developmental Disabilities Administration

Source: **Local Coordinating Council/State Coordinating Council Policies and Procedures Manual, September 1994**

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SECTION III - LOCAL COORDINATING COUNCILS: STRUCTURE, MEMBERSHIP, FUNCTIONS, PROCEDURES, RESPONSIBILITIES, RELATIONS WITH OTHER AGENCIES

3.01 LCC STRUCTURE AND MEMBERSHIP

LCCs are to be located within every county and Baltimore City. Members of the LCC include, by statute, at least one representative from:

1. The Mental Hygiene Administration;
2. The Department of Juvenile Services;
3. The Developmental Disabilities Administration;
4. The Alcohol and Drug Abuse Administration;
5. The local board of education;
6. The local health department
7. The local department of social services.

Agency directors may designate members of their staff to represent them on LCCs. Representatives must have the authority to develop local policies and procedures and commit resources of the agency.

In addition to the members mandated by statute, by July 1, 1995, each LCC must also have a parent advocate sitting or available to sit on the LCC. The advocate will provide assistance to parents of children presented at the LCC who may have questions or feedback about the process and may feel more comfortable talking with a parent. Guidelines will be forthcoming which give the LCC flexibility in choosing a parent representation model.

Source: Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994

3.02 ROLE OF THE LCC CHAIRPERSON

The chairperson of the LCC is responsible for the following:

- Scheduling LCC meetings
- Setting the agenda for LCC meetings
- Ensuring that LCC members are aware of the procedures for presenting cases and making decisions
- Dissemination of correspondence from the SCC to LCC members
- Ensuring that minutes are taken
- Notification to parents and attorneys of meeting dates, times, and locations, decisions made, and appeal rights
- Submission of quarterly reports to the SCC
- Communicating LCC issues to the SCC
- Attending LCC chairperson meetings

The process for selecting the LCC chairperson is determined by the LCC. It is recommended that the chair rotate yearly. The LCC may allow a representative of the Local Planning Entity to chair.

3.03 LCC FUNCTIONS

The functions of the LCCs are as follows:

1. Accept placement referrals from the agencies represented on the LCC;
2. Decide what type of placement is needed by the child with a disability referred for placement;
3. Provide an interagency plan of care for children with disabilities who need residential placements;
4. Submit recommended plans of care to the SCC; and

Source: Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994

5. Assist the agency primarily responsible for a child's care in implementing and monitoring residential placements.

LCCs must review every child with a disability at risk of, or to be referred to, an out-of-state placement, whether into a residential center or a less restrictive placement. For in-state placements, LCCs need only to review those children at risk of, or referred to, an in-state residential center.

The LCC may also provide a forum for resolving interagency disputes concerning children with disabilities, as is currently the practice in many jurisdictions. Additionally, the LCC may agree to accept referrals of children with disabilities who need interagency planning even if the child does not require residential placement. The decision to accept these referrals is left to each LCC.

3.04 LCC PROCEDURES

The SCC has developed general procedures applicable to all LCCs to implement their five major functions. Within the framework of these procedures, each LCC must also develop local procedures. The SCC strongly recommends that LCCs execute a memorandum of agreement between the local departments represented on the LCC delineating the procedures.

It is recommended that each LCC address the following issues in their operating procedures:

- Selection and rotation of a chairperson for the LCC.
- Setting forth the process for replacing the chairperson in the event he or she is no longer able to fulfill the

Source: **Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994**

Any information collected by the Subcabinet for Children, Youth, and Families in accordance with this subsection may not be redisclosed in any form that will reveal the identity of recipients of service.

Legislation mandating the sharing of information among public agencies, with consent, was passed by the Maryland General Assembly during 1994 session (House Bill 611).

3.08 ELIGIBILITY CRITERIA FOR RESIDENTIAL CENTER PLACEMENT

LCCs have the responsibility of determining if a child with a disability is eligible for residential placement at a level above group and foster home.

The Three Functional Eligibility Criteria for Residential Placement:

In order for a child with a disability to receive a residential placement above the level of group home, a minimum of three functional criteria must be met:

1. The child must be 20 years old or younger;
2. There must be documentation that the child has a disability. Documentation may include psychological profiles and scores, a psychiatric diagnosis, a social and family history, and/or a medical evaluation; and
3. Existing home and community-based residential services have been ruled out by the lead agency as being unavailable or inappropriate to meet the child's needs, even with wrap-around services.

Source: **Local Coordinating Council/State Coordinating Council**
Policies and Procedures Manual - September, 1994

Medical; 6) Psychological/Emotional; 7) Legal (especially for children with juvenile justice needs); 8) Safety (the need to be safe); and other specific life domain areas such as cultural/ethnic/religious needs or community needs.

3.10 CRITERIA FOR OUT-OF-STATE PLACEMENT RECOMMENDATION

A child may only be referred to the SCC for an out-of-state placement if one or more of the following conditions is met:

1. The out-of-state placement is closer in distance to the child's home than an alternative in-state placement;
2. The child is currently in detention pursuant to a court order;
3. An equally appropriate individualized in-state program is not available for the child for up to 100% of the average cost per placement of all appropriate out-of-state programs for which application would be made on behalf of the child. If, for example, a child would be referred to three out-of-state facilities (based on appropriateness, proximity, past experience, or other relevant factors) with an average cost of $90,000, but an equally appropriate in-state program is available for the same or less cost, the child must be served in the in-state program.

3.11 LCC VOTING MEMBERS TO PARTICIPATE IN THE ELIGIBILITY DETERMINATION

The SCC prefers that all eligibility determinations and service

Source: **Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994**

6. The SCC will notify the Case Manager of the Interagency Team's findings.
    a. If the Interagency Team determines that the program is in compliance with state standards, the Case Manager shall submit a completed referral packet to the SCC.
    b. If the Interagency Team determines that the program does not meet state standards, the SCC will continue to work with the Case Manager to locate appropriate alternatives.

3.17 LCC LINKAGE WITH THE ADMISSION, REVIEW AND DISMISSAL COMMITTEE

Admission, Review, and Dismissal (ARD) Committees are responsible for determining eligibility for all special education placements, including, but not limited to, non-public special education placements for students with disabilities. ARD committees may determine that a child requires a 24 hour special education program, perhaps in a residential center. This designation is termed Intensity VI. In these cases, the child is then referred to the LCC to determine if community-based Intensity VI services can be provided or developed, or whether placement in a residential center is necessary.

If a child has an Intensity VI designation, the LCC's responsibility is to develop an interagency plan of care that allows for implementation of the Individualized Educational Program

Source: Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994

(IEP) in the least restrictive environment which is appropriate and available. The LCC may not override an ARD decision; nor may the LCC modify an IEP. The LCC may, however, make recommendations to the ARD committee regarding the IEP.

In some jurisdictions it has proven to be a more efficient and family-friendly process to combine the ARD and LCC meetings for children at risk of placement in a residential center. The SCC encourages jurisdictions to consider this combined process. Only a duly constituted ARD committee may make a decision about a child's needs for Intensity VI special education services, however.

In situations where an integration of the ARD and LCC is impractical or not otherwise feasible, it is essential that parents are apprised beforehand of the role and function of the LCC and of the possibility that an alternative to residential center placement may be recommended by the LCC. The LCC must adhere to ARD timelines.

3.18 APPLICATION MATERIALS FOR A RESIDENTIAL CENTER PLACEMENT

To apply for State funding for a residential placement, the Local Coordinating Council or the designated lead agency must submit the following materials to the SCC:

1. SCC/LCC Case Folder
2. SCC Program Cost Sheet (completed by the facility)
3. LCC summary or minutes
4. All appropriate assessments and evaluations, including psychological, psychiatric, medical, speech/language,

Source: **Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994**

3.21 RENEWALS/ANNUAL REVIEWS

In order to apply for continued out-of-state placement and funding authorization, LCCs must submit a renewal application for each year a child is to remain in an out-of-state placement. The due date for renewals is announced several weeks prior to the date and is usually on or shortly after May 1. Renewal applications are sent to LCCs in January. For children placed from March through June, renewal applications should be submitted within 60 days following placement.

For children in residential centers in-state, the LCC must review the placements of these children at least annually also. LCC members should follow the applicable guidelines of their respective agencies for the submission of any materials necessary to continue the placement and funding. The LCC must submit the SCC Review Form for In-State Residential Center Placements to the SCC if a child is to remain in an in-state residential center beyond July 1.

3.22 AGENCY PROCEDURES FOR CHILDREN WHO REQUIRE AN EMERGENCY PLACEMENT

Occasionally children require an emergency placement into a residential center. Emergency placements shall be made solely to meet the needs of a child. They shall not be used for purposes of administrative convenience or for purposes not related to the needs of the child. At a minimum, the lead agency must arrange for an expedited review by the LCC and, if the placement is to be made

Source: Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994

out-of-state, apprise the SCC office of the need for the emergency placement. An application must be submitted to the SCC as soon as possible. Formal LCC and SCC reviews must still be scheduled following all applicable procedures as required by law and policy.

Local modifications to an agency's established organizational emergency placement procedures are permitted following review and approval from the SCC.

Emergency Placements by the Developmental Disabilities Administration:

The Developmental Disabilities Administration should use its established organizational procedures for emergency placements of children who are developmentally disabled and who require in-residence care and treatment for protection and/or adequate habilitation.

Emergency Placements by the Department of Juvenile Services:

The Department of Juvenile Services Agency should use its established organizational procedures for emergency placements of children with a disability who require guidance, treatment, or rehabilitation on an emergency basis as determined by the Department of Juvenile Services. Emergency residential placements must be authorized by the DJS headquarters placement office.

Emergency Placements by a Department of Social Services:

Local Departments of Social Services should use its established organizational procedures for emergency placements of children with disabilities who are thought to be abused, abandoned, or neglected. Emergency placements by a Department of Social Services require the

Source: **Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994**

approval of the Social Services Administration of the Department of Human Resources.

Emergency Placements by Local Health Departments:

The Local Health Department, through the health officer, may petition for the emergency evaluation of a child thought to be in need of emergency psychiatric intervention. The local health officer should continue to exercise this authority.

Emergency Placements by the Mental Hygiene Administration:

The Mental Hygiene Administration should use its established organizational procedures for emergency placements of children with a severe emotional disturbance who require guidance, treatment, or rehabilitation on an emergency basis. Emergency residential placements must be authorized by the MHA Regional Coordinator and MHA headquarters.

Emergency Placements by a Local Education Agency:

Local Education Agencies do not have authority to make emergency placements. Should a local education agency uncover a situation requiring an emergency placement of a child with a disability, established policies and procedures should be used in order to refer the child to the appropriate government agency, such as the police department, the Department of Juvenile Services, local health department or the Department of Social Services.

3.23 LCC MINUTES

The LCC shall develop a standardized form and procedure for documenting any discussions held regarding a specific child at an

Source: **Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994**

placement above the level of group or foster home, the case manager should leave the meeting with the needed resource commitments secured. As soon as possible after the meeting, the worker should proceed to facilitate the agreed upon services. If the service commitments are not honored, it is the responsibility of the case manager to reschedule the child at the next LCC meeting to review the case again.

6. FOLLOW-UP WORK FOR CHILDREN RECOMMENDED FOR AN OUT-OF-STATE PLACEMENT

When the members of the LCC agree that a child needs an out-of-state placement, written recommendation is made to the SCC to approve and authorize funding for the placement. The case manager is responsible for sending all of the necessary information to the SCC in a timely fashion. When the SCC approves a recommended residential placement, the case manager is responsible for placing the child into the program.

7. MONITORING THE RESIDENTIAL PLACEMENT

The assigned case manager is responsible for the on-site monitoring of residential placements. The monitoring role includes interviewing the child and all of the staff who work with the child. The child's educational and therapeutic records also need to be reviewed. Following the on-site review, the worker is to prepare a written report commenting on the extent to which the child is meeting the goals and objectives of the residential placement and the extent to which the facility is implementing the child's goals and objectives. The report is to be shared with

Source: Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994

members of the Local Coordinating Council when the child receives his or her annual review. Case Managers are responsible for submitting a renewal packet to the SCC on each child who will be remaining in an out-of-state placement at the beginning of a new Fiscal Year.

On-Site Reviews by LEA's

Many local education agencies send staff to conduct case reviews for children placed in non-public schools. It may be possible for the local education agency official to perform the case-by-case monitoring on behalf of the LCC.

When local education agencies are given lead agency and case management responsibilities, officials should check regularly with the Maryland State Department of Education, Division of Special Education, Nonpublic Schools Branch. Nonpublic Schools Branch staff annually visit residential schools for children with disabilities in order to assure that the facility: is licensed, employs certified special education teachers; and meets the needs of students with disabilities in placement.

DDA, SSA, and DJS On-Site Reviews

The Developmental Disabilities Administration, the Social Services Administration, and the Department of Juvenile Services, have staff assigned to do monitoring and evaluation of children in private residential placements. Case managers performing monitoring functions on behalf of a LCC should check to see whether staff from these Administrations can perform the on-site monitoring functions.

Source: **Local Coordinating Council/State Coordinating Council Policies and Procedures Manual - September, 1994**

8. SCHEDULING THE SIXTY DAY REVIEW FOR CHILDREN WITH DISABILITIES WHO RECEIVE SPECIAL EDUCATION SERVICES

All children with disabilities who receive special education services in a residential placement must have an on-site review within sixty days of the child's initial placement. The assigned case manager needs to conduct the review in order to determine the progress and adjustment that the child is making. If the local education agency is not the lead agency and the child is entitled to special education services, special education officials need to be contacted to assure that the on-site review addresses and satisfies their requirements. The results of the on-site review are to be shared with the members of the LCC and the child's parents or guardians. Parents and educational guardians must be invited to all 60 day ARD reviews for children in special education placements.

9. THE ANNUAL ON-SITE REVIEW

At a minimum, the assigned case manager shall perform or have performed an annual on-site review in order to assure that the goals and objectives of the residential placement are being addressed and to determine the child's progress. Generally, the annual review will determine educational, therapeutic, and rehabilitative progress. The results of the annual review are to be put in writing and shared with members of the LCC and the child's parents or guardians. If the annual on-site review constitutes an ARD review, the parent or educational guardian must be invited.

Source: Local Coordinating Council/State Coordinating Council
Policies and Procedures Manual - September, 1994

MD

BYLAWS
of the
STATE BOARD OF EDUCATION

CODE OF MARYLAND REGULATIONS
13A.09.10

Educational Programs in Nonpublic Schools
and
Child Care and Treatment Facilities

MARYLAND STATE DEPARTMENT OF EDUCATION
200 West Baltimore Street
Baltimore, Maryland 21201

March 1993

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Chapter, Educational Programs Operated by a Nonpublic Residential Juvenile or Child Care Facility, repealed effective March 29, 1993 (20:6 Md.R. 582)

Regulations .01-.11, Educational Programs in Nonpublic Schools and Child Care and Treatment Facilities, adopted effective March 29, 1993 (20:6 Md.R. 582)

Title 13A
STATE BOARD OF EDUCATION

Subtitle 09 NONPUBLIC SCHOOLS

Chapter 10 Educational Programs in Nonpublic Schools and Child Care and Treatment Facilities

Authority: Education Article, §2-206, Annotated Code of Maryland

.01 Scope.

A. These regulations are established for issuing a Certificate of Approval by the State Board of Education to an individual or entity, excluding the federal government or any state, county, or municipal agency or division of these, which is responsible for governing and operating a school providing a Type I, Type II, or Type III educational program, or any combination of these, as defined in these regulations in a facility licensed by a unit of State government to provide treatment or care, or both.

B. These regulations also apply to educational programs for children placed in accordance with Education Article, §8-409, Annotated Code of Maryland. These regulations do not apply to facilities holding a child care center license issued by the Department of Human Resources.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Career and technology education" means an educational program provided by a teacher to students in a specific occupational area which will lead to advanced training or job placement upon completion of the program.

(2) "Class" means a group of students scheduled to report regularly to a teacher at a particular time and place for the implementation of the educational program.

(3) "Department" means the State Department of Education.

(4) "Early childhood educational program" means a home-based or school-based, or both, special education program, provided directly to the student from birth through 4 years old or to the parent, or both.

(5) "Educational program" means:

(a) An organized program of instruction in English language arts, mathematics, science, social studies, and other curricular areas provided by a teacher to students enrolled in nursery school, kindergarten, and grades 1—12, or any combination of these;

(b) An organized program of instruction in basic skills and life skills based on the Declared Competencies Index specified in COMAR 13A.03.01.03, which is incorporated by reference, provided by a teacher to students when an educational program as described in §D(5)(a), (c), and (d) of this regulation is not appropriate;

(c) An organized program of instruction provided by a teacher to students in a pre-general educational development or general educational development program, or both;

(d) An organized program of special education and related services provided by a teacher and related services providers as specified in each student's individualized education program;

(e) An organized program of instruction in precareer and technology education or career and technology education, or both, provided by a teacher to students; or

(f) An organized transitional program of instruction implemented for an average of 60 school days or fewer.

(6) "Elementary school" means an educational program provided by a teacher to students in any combination of grades 1—8 or their equivalents consisting of instruction in English language arts, mathematics, science, social studies, and, if applicable, other curricular areas.

(7) "General educational development test preparation program (GED)" means an educational program provided by a teacher to students, consisting of instruction preparing students to take the General Educational Development Test.

(8) "Individualized education program (IEP)" means a written description of the special education needs of a student and the special education and related services to be provided to meet those needs, which has been approved by the placing local school system.

(9) "Intensity of special education services" means Intensity I—VI identified in COMAR 13A.05.01 or any one or combination of these.

(10) "Kindergarten" means an educational program provided by a teacher to students 5 years old or who will be 5 years old by December 31 of the current school year consisting of instruction in English language arts, mathematics, science, social studies, and, if applicable, other curricular areas.

(11) "Nongraded educational program" means a program of special education and related services for students from birth through 20 years old for whom instruction is provided based on ability or achievement rather than on age or grade.

(12) "Nursery school" means an educational program for students who are or will be 2 years old through 4 years old during the school year in which they are enrolled.

(13) "Parent" means parent as identified in COMAR 13A.05.01.

(14) "Personal education plan (PEP)" means a written description of an educational program other than that described in an IEP to be provided to a student.

(15) "Precareer and technology education" means an educational program provided by a teacher to assist students in:

(a) Identifying and developing talents, interests, attitudes, and potential related to the world of work;

(b) Occupational information;

(c) Career and technology education guidance; and

(d) When appropriate, activities designed to develop individual skills and creative abilities, proper use of tools, machines, processes, and products.

(16) "Pre-general educational development (pre-GED)" means an educational program provided by a teacher to students who do not meet the GED program entry criteria for whom it is anticipated that entry into a GED test preparation program will be the appropriate means for earning a high school diploma.

(17) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist students with disabilities to benefit from special education as identified in COMAR 13A.05.01.

(18) "School" means an educational program which is provided by teacher for an organized group of students, at least two of whom do ot have the same parents and at least two of whom are not being nstructed on a regular daily basis by the student's parents, which is overned and operated by an individual or entity, excluding the fed- ral government or any state, county, or municipal agency or division f these.

(19) "School day" means a day when school is scheduled to be pen for students who are required to be in attendance in an educa- ional program.

(20) "Secondary school" means an educational program provided y a teacher to students in any combination of grades 9—12 consist- ng of instruction in English language arts, mathematics, science, ocial studies and, if applicable, other curricular areas.

(21) "Special education" means:

(a) Instruction provided by a teacher at no cost to the parents, hich is specially designed to meet the unique needs of a student with isabilities;

(b) Physical education for the development of physical and otor fitness, fundamental motor skills and patterns, and skills in quatics, dance, and individual and group games and sports, includ- ng intramural and lifetime sports;

(c) Career and technology education directly related to the reparation of individuals for paid or unpaid employment, or for addi- ional preparation for a career requiring other than a baccalaureate or dvanced degree;

(d) Speech pathology if the service consists of specially esigned instruction to meet the unique needs of a student with dis- bilities; and

(e) Special physical education, adapted physical education, ovement education, and motor development.

(22) "Special education decision-making process" means all pro- edures conducted by a local school system relating to the identifica- on, evaluation, or educational placement of a student and the rovision of a free, appropriate public education as identified in OMAR 13A.05.01.

(23) "State Board" means the State Board of Education.

(24) "Student" means an individual who has not earned a high school diploma to whom a teacher provides instruction.

(25) "Student with disabilities" means those students who have been identified by a local school system as having the impairments identified in COMAR 13A.05.01 who have not earned a high school diploma.

(26) "Teacher" means a person, employed by a school, who provides instruction to students and meets the requirements for a teacher as described in these regulations.

.03 Certificate of Approval.

A. A school applying for a Certificate of Approval shall furnish such information as the State Board considers necessary in order to ascertain compliance with these regulations.

B. A Certificate of Approval shall be issued to a school when the State Board is satisfied that these regulations have been met.

C. A Certificate of Approval is limited to all of the following specifications as recorded on it:

(1) Name of the school;

(2) Location of the school;

(3) Individual or entity responsible for governing and operating the school;

(4) Type I, Type II, or Type III, or any combination of these; and

(5) Classification of the educational program to include one or more of the following:

(a) Nursery school;

(b) Kindergarten;

(c) Grades 1—12 or any combination of these;

(d) Pre-GED;

(e) GED;

(f) Precareer and technology education;

(g) Career and technology education;

(h) Special education to include all of the following:

(i) Intensity or intensities of special education services,

(ii) Disability or disabilities of students,

(iii) Ages of students,

(iv) Nursery school or kindergarten, or grades 1—12 or any combination of these, if applicable,

(v) Nongraded educational program, if applicable, and

(vi) Early childhood educational program, if applicable;

(i) Basic skills and life skills; or

(j) Diagnostic-prescriptive.

D. A school shall operate in a manner which is consistent with the specifications as recorded on the Certificate of Approval.

E. A school shall inform the Department in writing at least 30 days before the occurrence of any change of specifications as recorded on the Certificate of Approval.

F. A school shall inform the Department in writing at least 30 days before it ceases operating the educational program.

G. A Certificate of Approval may not be sold, transferred, or pledged.

H. A Certificate of Approval becomes null and void when the individual or entity:

(1) Ceases operating the educational program; or

(2) Is ordered by the State Board to cease operating the educational program.

.04 Compliance.

A. A school shall comply with these regulations as the condition for maintaining a Certificate of Approval issued by the State Board.

B. A school shall certify compliance with these regulations on the Annual Report form provided by the Department. This form shall be filed annually with the Department.

C. A school shall certify that it does not practice discrimination based upon race, color, or national origin by submitting the Certification of Nondiscrimination form provided by the Department.

D. A school shall be open for inspection by the State Superintendent of Schools or designee for all of the following reasons:

(1) To verify compliance with these regulations for the purpose of initial issuance of a Certificate of Approval;

(2) To monitor and evaluate schools to ensure ongoing compliance with these regulations; and

(3) To investigate written complaints relating to these regulations.

.05 Type I Educational Program—General Requirements.

A. A Type I educational program is any one or combination of the following instructional programs provided by a school, on the grounds of the school, on a full-time basis to students who are enrolled full-time in the instructional program of the school:

(1) Nursery school, kindergarten, elementary school, secondary school;

(2) Pre-GED;

(3) GED;

(4) Precareer and technology education;

(5) Career and technology education; or

(6) Special education and related services.

B. Description of the Educational Program. A school shall have a written description of its educational program which includes all of the following:

(1) A statement of the goals toward which the educational program's efforts are directed;

(2) Individual or entity responsible for governing and operating the educational program;

(3) Table of organization to include the educational program and any other program components;

(4) Student enrollment capacity and characteristics including the ages, gender or genders, and disability or disabilities, if applicable;

(5) Educational program or programs offered;

(6) Staff employed to implement the educational program, including related services staff in special education programs; and

(7) Physical facilities to be used by the school.

C. Ratio of Students to Teacher.

(1) A teacher shall implement the educational program for each class.

(2) With the exception of a special education program, a school may not assign more than 10 students to a teacher unless the Department approves a written justification for the increased number.

(3) With the exception of a special education program, a full-time aide shall be assigned to each class of students enrolled in a nursery school or kindergarten.

D. Student Records.

(1) Except for a student enrolled in a nursery school or kindergarten or Intensity V or Intensity VI special education program, a school shall document diligent efforts to acquire the previous student record of each student upon admission to the educational program.

(2) A school shall ensure that a review of the previous student record of each student is conducted to determine the appropriate level or grade placement within the educational program.

(3) A school shall maintain a cumulative student record, for each student, which includes all of the following:

(a) Student's first and last names;

(b) Student's date of birth;

(c) Student's home address;

(d) Month, day, and year student initially entered;

(e) Month, day, and year student withdrew;

(f) Student's daily attendance;

(g) Student's performance information in each curricular area; and

(h) Student's PEP or IEP, or both, as applicable.

(4) The Department's student record system may be used for maintaining student records.

(5) A school shall give a copy of the complete cumulative student record of each student as specified in §D(3) of this regulation to the representative of the placing agency of each student upon discharge from the school.

E. Personal Education Plan. A PEP shall be developed for each student who is enrolled in an educational program which is not a special education program, and shall include all of the following:

(1) Student's name, gender, and date of birth;

(2) Projected beginning and ending date for implementation of PEP;

(3) Grade level of student's performance in reading and math;

(4) Standardized or diagnostic tests, or both, used to determine grade level of student's performance in reading and math and date of administration;

(5) Educational program in which student is enrolled as specified in §A(1)—(5) of this regulation;

(6) Schedule of student's classes and teachers;

(7) Summary of secondary school credits earned, and specification of credits to be earned in the secondary school program, if applicable;

(8) Summary of Maryland Functional Test requirements that have been met and those that have not been met, if applicable;

(9) Date of PEP development; and

(10) Name of individual who prepared PEP.

F. Instructional Materials and Equipment. A school shall own instructional materials and equipment of sufficient variety, quantity, and quality to implement the educational program.

G. Library Media Collection.

(1) A school shall provide a library media collection which includes a variety of both print and nonprint materials and related equipment of sufficient quality and quantity to support and supplement the educational program in all curricular areas for the students enrolled.

(2) A school shall own a minimum quantity of library media service materials and equipment as follows:

(a) 10 items per student for each educational program providing an early childhood education program, nursery school, kindergarten, or any combination of these;

(b) 500 items for a school with fewer than 25 students, or 20 items per student, whichever is greater;

(c) 750 items for a school with more than 26 students but fewer than 75 students, or 20 items per student, whichever is greater; and

(d) 1,500 items for a school with more than 75 students, or 20 items per student, whichever is greater.

(3) The library media collection shall be classified and catalogued so that each item can be located and returned to the collection.

(4) A new school shall have at least 1/3 of the required collection at the beginning of the first year of operation and a written plan for acquiring the remaining items not later than the beginning of the third year of operation.

H. School Day.

(1) The schedule for the school day shall be in writing.

(2) A school providing an educational program other than a special education program shall operate for at least 4 clock hours per day, exclusive of time scheduled for meals. At least 2 clock hours per day shall be scheduled for instruction in English language arts, science, math, and social studies.

I. School Year. A school shall:

(1) Develop a yearly calendar which includes the dates for the opening and closing of school, days of instruction, holidays, vacations, and other pertinent events or activities in the schedule for the year; and

(2) Provide for a school year with at least 180 days of instruction.

J. Compliance.

(1) A school which does not hold a license from another unit of State government shall meet the requirements in §J(2) and (3) of this regulation.

(2) The legal authority shall certify that it is in compliance with the requirements for:

(a) A criminal background check as specified in Family Law Article, Title 5, Subtitle 5, Annotated Code of Maryland; and

(b) Reporting suspected child abuse as specified in Family Law Article, Title 5, Subtitle 5, Annotated Code of Maryland.

(3) Health, Fire Safety, and Zoning.

(a) For initial approval, a school shall submit written documentation from responsible approval or licensing authorities verifying that a school is in compliance with applicable health, fire safety, and zoning regulations as a condition of occupancy of any facility used by the school.

(b) For continued approval, a school shall maintain documentation of compliance with applicable health, fire safety, and zoning regulations as a condition of occupancy of any facility used by the school.

K. Public Relations. The public relations information of a school shall be accurate, and may not be erroneous or misleading, either by actual statement, omission, or intimation.

.06 Type I Educational Program—Specific Requirements for General Education Programs.

A. Nursery School, Kindergarten, Elementary School, and Secondary School Program. A school providing any one or combination of these educational programs shall have written curriculum guides in English language arts, mathematics, social studies, science, and any other curricular areas which include a written description of the instructional program for each subject at each grade level.

B. Pre-GED Program. A school providing a pre-GED educational program shall meet all of the following requirements:

(1) Establish written criteria for entry into the pre-GED program which include all of the following:

(a) Minimum skill levels in reading, writing, and mathematics,

(b) Minimum age, and

(c) A determination for each student that the GED will eventually be the appropriate means for earning a high school diploma; and

(2) Use a written curriculum guide which includes a written description of the instructional program in each area of instruction.

C. GED Program. A school providing a GED educational program shall meet all of the following requirements:

(1) Establish written criteria for entry in the GED program which include:

(a) Minimum skill levels in reading, writing, and mathematics,

(b) Minimum age,

(c) State residency requirement, and

(d) A determination for each student that the GED is the appropriate means for earning a high school diploma;

(2) Determine the performance level of each student within the GED test preparation program for placement at the appropriate instructional level within the five GED test areas; and

(3) Use a written curriculum guide which includes a written description of the instructional program in each of the five GED test areas sufficient to prepare a student for the GED test.

D. Precareer and Technology Education and Career and Technology Education.

(1) A school providing an educational program specified in Regulation .05A(1)—(3) and (6) of this chapter may also provide precareer and technology education, or career and technology education, or both.

(2) A student who is not eligible for enrollment in the educational programs specified in Regulation .05A(1)—(3) and (6) of this chapter because the student has earned a high school diploma may be enrolled in precareer and technology education, or career and technology education, or both, of a school.

(3) A school which provides precareer and technology education, or career and technology education, or both, shall have all of the following:

(a) Written criteria for entry into precareer and technology education, or career and technology education, or both, as appropriate;

(b) An individual career and technology education assessment for each student;

(c) A written curriculum guide which includes a description of the scope of each course offered;

(d) In precareer and technology education, instruction to assist students in:

(i) Identifying and developing talents, interests, attitudes, and potential related to the world of work,

(ii) Acquiring occupational information and career and technology education guidance, and

(iii) Developing individual skills and abilities to assist in the proper use of tools, machines, processes, and products; and

(e) In career and technology education, instruction in a specific occupational area which will lead to advanced training or job placement upon completion of the program.

.07 Type I Educational Program—Requirements for a School Granting Secondary School Credit and a Secondary School Diploma.

A. A school, including a school offering a special education program, which grants secondary school credit shall have a written policy defining a unit of credit based on one or more of the following:

(1) Instruction in a particular course which is provided for the number of clock hours required by the local school system of the jurisdiction where the facility is located;

(2) A minimum of 120 clock hours of instruction; or

(3) Successful demonstration of learning outcomes established by a school for each course.

B. When a unit of credit is defined as "successful demonstration of learning outcomes" as specified in §A(3) of this regulation, a school shall include performance requirements and evaluation procedures in its curriculum guide. A school may grant credit based on successful demonstration of learning outcomes when the learning experiences have occurred outside the approved educational program.

C. A school shall have a written policy stating whether a secondary school diploma is issued by the school or the local school system or whether both options are available.

D. A school which issues a secondary school diploma shall have a written policy specifying the following minimum requirements for earning a diploma:

(1) Satisfactory completion of the Maryland Functional Tests and the Maryland Test of Citizenship Skills; and

(2) Completion of 21 credits at the completion of grades 9—12 as follows:

(a) English language arts—four credits,

(b) Mathematics—three credits,

(c) Science—three credits,

(d) Social studies—three credits, and

(e) Electives—eight credits as specified in the school's written policy establishing credits required for graduation.

E. A secondary school shall be prepared to present as a separate document a transcript of the secondary school record of each student for each year of enrollment which includes all of the following:

(1) Student's first and last names;

(2) Student's date of birth;

(3) Student's home address;

(4) Credits and grades earned in each subject area;

(5) Code for the meaning of the grading system;

(6) Transfer credits accepted by the secondary school;

(7) Month and year student initially entered; and

(8) Month and year student withdrew or graduated.

F. A secondary school shall maintain permanently the original or a legible copy of the secondary school transcript of each student who has been enrolled in the school.

G. Before a secondary school ceases operation, the administrative head of the school shall file with the Department, in alphabetical order, the original or a legible copy of the secondary school's transcript for each student who has been enrolled in the school.

H. Diploma. A secondary school's diploma may not imply that the requirements for graduation from a Maryland public secondary school have been met.

.08 Type I Educational Program—Requirements for Special Education Programs.

A. A school shall provide special education and related services consistent with each student's IEP developed through the local school system's special education decision-making process.

B. As appropriate for individual students, special education and related services shall be provided which are designed to:

(1) Help students learn:

(a) English language arts, social studies, math, and science consistent with each student's ability,

(b) Self-help and daily living skills, and

(c) Precareer and technology education and career and technology education skills;

(2) Foster sound social and emotional growth and development;

(3) Promote healthy physical growth and development; and

(4) Develop meaningful and constructive skills for the use of leisure time.

C. An early childhood educational program may offer a parent-infant program using itinerant personnel through a school-based or home-based model when itinerant personnel serve as a resource to the parent in suggesting activities which would enhance the student's development.

D. A school providing special education, which provides a pre-GED, GED, precareer and technology education, or career and technology education, or any combination of these, as a part of the special education program, shall meet the requirements specified in Regulation .06B—D of this chapter for those educational programs.

E. Curriculum Guides.

(1) A school providing nursery school, kindergarten, grades 1—12 instruction, or any combination of these, shall have a written description of the scope and major instructional goals for each subject or area of instruction at each grade level.

(2) A school providing nongraded instruction for students from birth through age 20, or any combination of these ages, shall have a written description of the scope and sequence of major instructional goals for each curricular area of instruction.

F. Staff to Student Ratio. A school shall provide teachers and other personnel to implement each student's IEP according to the maximum average ratios specified in COMAR 13A.05.01.

G. Assessment.

(1) A school shall have on file assessments provided by the local school system for each student enrolled as required by COMAR 13A.05.01.

(2) The assessments shall document each student's eligibility for the special education and related services provided by the school in accordance with the student's IEP.

H. Individualized Education Program.

(1) A school shall have on file a copy of the IEP approved by the local school system for each student before implementing a student's educational program.

(2) A school shall implement the IEP approved by the local school system for each student enrolled for each year of the student's enrollment.

I. Privacy Rights.

(1) For the purpose of §I(2) of this regulation, whenever a student becomes 18 years old, the rights accorded to and consent required of the parents of the student after that shall be accorded to and required only of the eligible student, unless otherwise prohibited.

(2) A school shall have written policies and procedures on protecting the right of privacy of students and their parents relative to access to, and release of, records of individual students which include all of the following:

(a) A policy statement assuring that all records pertaining to a student are available to that student's parents for inspection or review;

(b) Procedures to be followed by parents who request to inspect and review their child's records;

(c) A policy statement assuring that the school may not disclose personally identifiable information from a student's record without prior written consent of the student's parents;

(d) Procedures whereby the school shall maintain a written record of requests for, and disclosure of, personally identifiable information from the student's record that includes the:

(i) Name of the reviewer,

(ii) Date of the review,

(iii) Purpose of the review; and

(e) Procedures for informing parents of these policies and procedures.

(3) Nothing in a school's written policies and procedures on protecting the right of privacy of students and their parents specified in §I(2) of this regulation shall be construed to abrogate the privacy rights of a student or the student's parents under applicable federal law.

J. Administrative Practices:

(1) A school which provides a special education program to students with disabilities not placed in the school by a local school system shall have a written agreement with the local school system

where the school is located describing the local school system's responsibility for implementing the procedural safeguards of COMAR 13A.05.01 in cooperation with the school.

(2) A school shall have written policies and procedures for:

(a) Participating in the development of an IEP with the local school system which referred the student for placement; and

(b) Promptly notifying the local school system if the IEP needs to be revised after a student is enrolled.

(3) A school shall have written policies and procedures for dismissal of students, including promptly notifying the local school system which referred the student for placement and maintaining a student's placement during due process proceedings, unless the IEP provides for an alternative placement during due process proceedings and the parents have agreed to the alternative placement.

(4) If applicable, a school shall have written policies and procedures for the management of student behavior, including the use of physical restraint and isolation.

K. School Day.

(1) The schedule for the school day shall be in writing.

(2) The length of the school day shall be sufficient to implement each student's IEP.

L. School Year. A school, except a school offering an early childhood education program, shall provide for at least a 180-day school year to the students enrolled as defined in Education Article, §7-103, Annotated Code of Maryland, unless otherwise extended by the Admission, Review, and Dismissal Committee.

M. Admissions.

(1) A school shall have a written admissions policy regarding students who may be considered for admission to the school. The admissions policy shall include but not be limited to the ages, gender or genders, primary disability or disabilities, levels of academic performance, and behavioral characteristics of students appropriate for admission to the school.

(2) A school may admit students with disabilities from birth through 20 years old.

N. Intensity VI Special Education and Related Services. A school providing Intensity VI special education and related services:

(1) Shall implement the residential component of the IEP for each student;

(2) Shall provide evidence of the integration of the day and residential programs;

(3) Shall hold all licenses as required by State or local government, or both, to operate;

(4) Shall document its provision for medical services in an emergency;

(5) Shall ensure that an adult is in attendance and readily available to the students at all times the facilities are open;

(6) May not be approved to operate in a facility licensed by a unit of State or local government, or both, to provide care or treatment, or both, in a home setting.

.09 Type I Educational Program—Personnel Requirements.

A. Administrative Head. A school shall employ an administrative head responsible for the day-to-day administration of the school.

B. Educational Director.

(1) A school shall employ an educational director to be responsible for the coordination and supervision of the educational program. More than one full-time educational director may be required to ensure adequate coordination and supervision of the educational programs in a large school or a school offering a variety of educational programs.

(2) An educational director, with the exception of the educational director of a special education program, shall hold a valid Maryland certificate as an elementary or secondary supervisor or principal or a valid Maryland certificate in elementary or secondary education. If a school offers an educational program only at the nursery school or kindergarten level, or both, the educational director shall hold a valid Maryland certificate as an early childhood supervisor or principal or a valid Maryland certificate in early childhood education.

(3) An educational director of a special education program shall hold a valid Maryland certificate as special education supervisor or principal or a valid Maryland certificate in special education.

(4) An educational director qualifying with a teaching certificate shall also have at least 3 years of successful teaching experience as verified by former employers. The teaching experience shall be in regular or special education, or both, as appropriate for the educational director's assignment.

(5) A school offering both regular and special education shall employ an educational director who meets the:

(a) Educational director requirements as specified in §B(2)—(4) of this regulation; or

(b) Requirements specified in §B(2) and (4) of this regulation, and another educational director who meets the requirements in §B(3) and (4) of this regulation.

(6) The educational director shall have sufficient time to carry out the duties assigned.

(7) The duties and responsibilities of the educational director and administrative head may be assigned to the same person.

(8) The duties and responsibilities of the educational director may be assigned to a teacher who has sufficient time to carry out the duties with the exception of an Intensity V or Intensity VI special education program.

C. Teachers.

(1) A school shall employ teachers who meet all of the requirements in §C(2)—(6) of this regulation.

(2) Nursery School and Kindergarten. Teachers assigned to teach students enrolled in a nursery school or kindergarten educational program, or both, shall hold a valid Maryland certificate in early childhood education.

(3) Elementary School, Secondary School, Pre-GED, GED, and Precareer and Technology Education Educational Programs. Teachers assigned to teach students enrolled in an elementary school, secondary school, pre-GED, GED test preparation, or precareer and technology education educational program, or any combination of these, shall hold a valid Maryland certificate in elementary or secondary education.

(4) Career And Technology Education. Teachers assigned to teach students enrolled in career and technology education shall hold a valid Maryland certificate in trades and industry or other areas of career and technology education according to their specific assignment.

(5) Special Education. Special education teachers and related services staff employed by a school on a full-time, part-time, voluntary, or

contractual basis to provide services specified in the IEPs of students with disabilities shall meet all of the following requirements:

(a) Teachers shall hold a valid Maryland certificate appropriate for the individual's assignment as specified in COMAR 13A.12.02;

(b) Teachers assigned to teach students in a specific subject area in a secondary school shall hold a valid Maryland certificate as specified in COMAR 13A.12.02 in the subject area or in special education; and

(c) Professionals providing related services specified on an IEP shall hold all licenses or certificates, or both, required by the State Board or another State licensing agency, or both.

(6) Teachers shall have sufficient time scheduled within each work week to prepare for the implementation of their instructional duties and responsibilities.

D. Aides. Full-time or part-time, paid or volunteer aides who assist teachers shall be under the direct instructional supervision of the teacher to whom they are assigned. The qualifications, duties, and responsibilities of all aides shall be clearly written.

.10 Type II Educational Programs.

A. A Type II educational program is an instructional program as specified in Regulation .05A(1) and (6) of this chapter in which instruction is provided by a nonpublic school and public school either on the grounds of the nonpublic school and the grounds of the public school, or solely on the grounds of the public school, with the primary goal of integrating students into the public school instructional program to the greatest extent appropriate. The curriculum, instructional materials and equipment, and library media service of the local school system are used by the school to implement the educational program.

B. A school may provide any one or combination of the following Type II educational programs:

(1) Nursery school, kindergarten, elementary school, or secondary school; or

(2) Special education and related services.

C. Description of the Educational Program. A school shall have a written description of its educational program which includes all of the following:

(1) A statement of the goals toward which the educational program's efforts are directed;

(2) Individual or entity responsible for governing and operating the educational program;

(3) Table of organization to include the educational program and any other program components;

(4) Student population served, including the ages, gender or genders, disability or disabilities, if applicable, and the average number of students enrolled;

(5) Instruction provided by the nonpublic school;

(6) Instruction provided by the public school to students who are also enrolled in the nonpublic school;

(7) Staff employed to implement the educational program, including related services staff in special education programs; and

(8) Physical facilities to be used by the nonpublic school.

D. Personnel. Staff shall meet the requirements specified in Regulation .09 of this chapter.

E. Student-Teacher Ratio.

(1) The student-teacher ratio in a nursery school, kindergarten, elementary school, or secondary school educational program may not exceed ten students to a full-time teacher unless the Department approves a written justification for the increased numbers.

(2) The student-teacher ratio in a special education program shall be as specified in Regulation .08F of this chapter.

F. Educational Program.

(1) Except for students enrolled in a nursery school, kindergarten, or special education program, or any combination of these, a school shall document diligent efforts to acquire the previous student record of each student upon admission to the school.

(2) A student shall receive instruction in English language arts, mathematics, social studies, science, and other curricular areas as appropriate.

(3) A school shall implement the curriculum of the public school in each grade and subject in which it provides instruction to students. The local school system is not required to provide the curriculum to the school.

(4) A school shall use the instructional materials and equipment used by the public school. The local school system is not required to provide the institutional materials and equipment to the school.

(5) A school shall use the library media service of the public school.

(6) A PEP shall be developed for each student enrolled in an educational program specified in §B(1) of this regulation and shall include all of the following:

(a) Student's name, gender, and date of birth;

(b) Projected beginning and ending date for implementation of PEP;

(c) Grade level of student's performance in reading and mathematics;

(d) Standardized or diagnostic tests, or both, used to determine grade level of student's performance in reading and mathematics and date of administration of test instruments;

(e) Grade placement in educational program;

(f) Schedule of student's classes and designation of nonpublic school or public school teacher for each class;

(g) Summary of secondary school credits earned and specification of credits to be earned in the secondary school program, if applicable;

(h) Maryland Functional Tests passed, if applicable;

(i) Date of PEP development; and

(j) Signature of individual who developed PEP.

(7) Special Education Program. A school providing a special education program shall meet the assessment and IEP requirements specified in Regulation .08G—H of this chapter.

(8) Student Progress Report. A school shall use the student progress reporting schedule and format of the public school.

(9) Secondary School Credit. A school granting secondary school credit shall meet the requirements specified in Regulation .07A and B of this chapter.

(10) Student Records.

(a) A student record shall be maintained for each student and shall include all of the following:

(i) Student's first and last names;

(ii) Student's date of birth;

(iii) Student's home address;

(iv) Grades earned in each subject area;

(v) Code for the meaning of the grading system;

(vi) Credits earned in each subject area, if applicable;

(vii) Transfer credits accepted by the secondary school, if applicable;

(viii) Maryland Functional Tests passed, if applicable;

(ix) Month and year student initially entered;

(x) Month and year student withdrew or graduated;

(xi) Student's daily attendance; and

(xii) Student's IEP or PEP, or both, as applicable.

(b) The student record of a secondary school student or a document which includes the components specified in Regulation .07E of this chapter shall be used as a transcript of a secondary school student's record.

(c) A secondary school shall maintain permanently the original or a legible copy of the secondary school transcript of each student who has been enrolled in the school.

(d) Before a secondary school, including a secondary school operated by a bona fide church organization, ceases operation, the administrative head of the school shall file with the Department in alphabetical order the original or a legible copy of the secondary school transcript for each student who has been enrolled in the school.

(e) A copy of a student's record and progress report shall be given to the placing agency caseworker upon discharge from the school.

(11) Privacy Rights. A school providing a special education program shall meet the privacy rights requirements specified in Regulation .08I(2) of this chapter.

(12) Admissions.

(a) A school shall have a written admissions policy regarding students who may be considered for admission to the school. The admissions policy shall include but not be limited to the ages, gender or genders, primary disability or disabilities, if applicable, levels of academic performance, and behavioral characteristics of students appropriate for admission to the facility.

(b) A school may admit students with disabilities from birth through 20 years old.

(13) School Day.

(a) The length of the school day shall be the same as that of the public school.

(b) A school shall develop a written schedule for each student.

(14) School Year.

(a) The length of the school year shall be the same as that of the local school system.

(b) A school shall develop a written calendar of the school year.

(15) Health, Fire Safety, and Zoning. A school which operates an educational program in its facility and does not hold a license from another unit of State government shall meet the requirements specified in Regulation .05J of this chapter.

(16) Administrative Practices. A school providing a special education program shall have administrative policies and procedures as specified in Regulation .08J of this chapter.

(17) Public Relations. The public relations information of a school shall be accurate and may not be erroneous or misleading, either by actual statement, omission, or intimation.

.11 Type III Educational Programs.

A. A Type III educational program is a transitional instructional program not to exceed an average of 60 school days provided by a school to students in a facility licensed by a unit of State government.

B. A school may provide any one or combination of the following Type III educational programs:

(1) Nursery school educational program;

(2) Kindergarten educational program which continues implementation of a student's public school program;

(3) Elementary school educational program which continues implementation of a student's public school program;

(4) Secondary school educational program which continues implementation of a student's public school program;

(5) Basic skills and life skills program based on the Maryland Declared Competencies Index specified in COMAR 13A.03.01.03, which is incorporated by reference;

(6) Diagnostic-prescriptive educational program which provides a comprehensive assessment of a student's strengths and weaknesses as well as a specific plan for amelioration of assessed deficits;

(7) Pre-GED test preparation program; or

(8) GED test preparation program.

C. Description of Educational Program. A school shall have a written description of its educational program which includes all of the following:

(1) Goals toward which the educational program's efforts are directed;

(2) Individual or entity responsible for governing and operating the educational program;

(3) Table of organization to include the educational program and any other program components;

(4) Description of the student population served, including the ages, gender or genders, educational programming needs of the students enrolled, and the average number of students enrolled;

(5) Educational program or programs offered as specified in §B of this regulation;

(6) Teacher or teachers employed to implement the educational program; and

(7) Description of the physical facilities to be used by the educational program.

D. Acquisition of Previous Student Records.

(1) Within 5 days of a student's placement, a school shall acquire all of the following educational information from an official of the previous school placement of a student for the purpose of determining an appropriate educational program:

(a) Student's previous grade placement;

(b) Student's performance in each curricular area;

(c) Student's high school credits earned to date, if applicable;

(d) Student's IEP, if applicable;

(e) Maryland Functional Tests passed, if applicable; and

(f) Student's days of attendance in the current school year.

(2) The information in §D(1) of this regulation may be acquired by telephone.

(3) A school shall maintain a record of the information acquired in accordance with §D(1) of this regulation, which shall also include a record of the date of contact and the name and title of the individual from whom the information was acquired.

E. Personal Education Plan. Within 5 days of entering a facility, a PEP shall be developed for each student and shall include all of the following:

(1) Student's name, gender, and date of birth;

(2) Beginning date for implementation of PEP;

(3) Grade level of student's current performance in reading and mathematics;

(4) Standardized or diagnostic tests, or both, used to determine grade level of student's performance in reading and mathematics and dates of administration of tests;

(5) Student's placement in the educational program as specified in §B of this regulation;

(6) Student's educational plan with at least one goal for each area of instruction;

(7) Student's plans for returning to a secondary school program, if applicable;

(8) Date of PEP development; and

(9) Signature of individual who developed PEP.

F. Student Progress Report.

(1) When a student leaves a school, a progress report shall be prepared which includes all of the following information:

(a) Performance or grades, or both, in each area of instruction;

(b) Date of entrance in the educational program;

(c) Date of withdrawal from the educational program;

(d) Days of attendance in the educational program;

(e) Hours of instruction in each curricular area at the secondary level; and

(f) Recommendations for educational placement, including referral for special education services, if appropriate.

(2) A student's progress report and PEP shall be given to the placing agency caseworker upon discharge from the facility.

G. Instructional Materials and Equipment.

(1) A school shall own instructional materials and equipment in sufficient numbers and quality to implement the educational program.

(2) The appropriate local school system instructional materials and equipment shall be used to implement the educational programs specified in §B(2)—(4) of this regulation.

H. Personnel. Teachers shall hold a valid Maryland teaching certificate.

I. Student-Teacher Ratio. The ratio of students to each teacher may not exceed ten students to one full-time teacher unless the Department approves a written justification for the increased number.

J. School Day. A school shall:

(1) Develop a written schedule of the school day;

(2) Operate for at least 3 clock hours per day exclusive of time scheduled for meals; and

(3) Be in session 5 days a week except for holidays, vacations, and other pertinent events or activities.

K. School Year. A school shall:

(1) Develop a written calendar of the school year;

(2) Offer at least 180 days of instruction per year, and may remain in operation throughout the calendar year to accommodate student educational needs.

L. Public Relations. The public relations information of a school:

(1) Shall be accurate; and

(2) May not be erroneous or misleading, either by actual statement, omission, or intimation.

Administrative History

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Regulations .02B, .04B, C, .05C, H, .06, .07C, D, and .08C—E amended effective January 15, 1989 (15:27 Md. R. 3137)

Chapter, Educational Programs Operated by a Nonpublic Residential Juvenile or Child Care Facility, repealed effective March 29, 1993 (20:6 Md. R. 582)

Regulations .01—.11, Educational Programs in Nonpublic Schools and Child Care and Treatment Facilities, adopted effective March 29, 1993 (20:6 Md. R. 582)

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Maryland State Department of Education
Division of Special Education

COMAR 13A.05.01

Programs for Students with Disabilities

Revised
October 1991

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Chapter 01 Programs for Students with Disabilities

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Title 13A
STATE BOARD OF EDUCATION
Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS
Chapter 01 Programs for Students with Disabilities (Birth through Age 20)

Authority: Education Article, §§8-301--8-307 and
8-401--8-416, Annotated Code of Maryland

.01 Commitment and Scope.

A. These regulations implement Education Article, Title 8, Subtitles 3 and 4, Annotated Code of Maryland, which assure a free, appropriate public education for all students with disabilities from birth through age 20.

B. Applicability.

(1) These regulations apply to all State and local public agencies within the State that operate education programs for students with disabilities from age three through 20, including the Maryland State Department of Education, local school systems, the Department of Health and Mental Hygiene, the Mental Hygiene Administration, the Developmental Disabilities Administration, and the Department of Juvenile Services.

(2) Federal and State regulations implemented pursuant to Part H of the Education of the Handicapped Act apply to programs for students with disabilities from birth through 2 years old.

C. In accordance with 20 U.S.C. §§1400-1485, Individuals with Disabilities Education Act, any reference in this chapter to "handicapped students" and "handicapped children" means "students with disabilities".

D. The Maryland School for the Blind and the Maryland School for the Deaf shall establish written policies and procedures for the admission and dismissal of students from their programs consistent with these regulations, including appropriate procedural safeguards.

E. Nonpublic schools which receive State or local funds for the placement of students with disabilities shall meet the requirements of Regulation .12E of this chapter. Local school systems which place students with disabilities in nonpublic schools shall ensure that those students are afforded appropriate procedural safeguards in accordance with these regulations.

F. The State Department of Education shall monitor and evaluate all public and nonpublic education programs for students with disabilities to ensure compliance with these regulations and other applicable State and federal laws. The State Department of Education shall take appropriate actions authorized by law to enforce these regulations and other applicable State and federal laws.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Extended school year services" means an individualized extension of specific services beyond the regular school year provided as part of a free, appropriate public education in accordance with the student's individualized education program for students exhibiting the need for special education, related services, or both, beyond the regular school year.

(2) "Free, appropriate public education" means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the State Department of Education, including the requirements of this section;

(c) Include early childhood, preschool, elementary school, or secondary school education; and

(d) Are provided in conformity with an individualized education program which meets the requirements under Regulations .09 of this chapter.

(3) "Least restrictive environment" means that:

(a) To the maximum extent appropriate, students with disabilities, including students in public and private institutions or other care facilities, are educated with students who are not disabled; and

(b) Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(4) "Nonacademic and extracurricular services and activities" means counseling services, athletics, transportation, health services, recreational activities,

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special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to students with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(5) Parent

(a) "Parent" means the parent of a student and includes:

(i) A natural parent;
(ii) A guardian;
(iii) A person acting as a parent such as a relative or a stepparent with whom a student lives, including those relatives or stepparents who are foster parents;
(iv) Any other individual who is legally responsible for a student's welfare; or
(v) A person appointed as the parent surrogate in accordance with Regulation .16 of this chapter.

(b) "Parent" does not include a social worker or a foster parent, unless appointed as a parent surrogate.

(6) "Public agency" means the local school system and any State agency which is involved in the education of students with disabilities, including the Department of Health and Mental Hygiene, the Mental Hygiene Administration, the Developmental Disabilities Administration, and the Department of Juvenile Services.

(7) Reasonable Efforts.

(a) "Reasonable efforts" to inform parents of and involve them in the special education decision-making process means:

(i) Giving timely notice to parents of meetings;
(ii) Scheduling meetings at a mutually agreed upon time and place;
(iii) Fully explaining to the parents their rights in the special education decision-making process;
(iv) Providing to parents written information on placement procedures and due process rights; and
(v) Arranging for interpreters for the parent who is deaf or whose native language is other than English.

(b) "Reasonable efforts" includes:

(i) Sending general delivery and certified letters to the parents:
(ii) Making telephone calls to the parents; or
(iii) Visiting the parents.

(8) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist students with disabilities to benefit from special education. "Related services" includes:

(a) "Audiology" which means:

(i) Identification of students with hearing loss,
(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing,
(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading, lip reading, hearing evaluation, and speech development and conservation,
(iv) Creation and administration of programs for prevention of hearing loss,
(v) Counseling and guidance of students, parents, and teachers regarding hearing loss, and
(vi) Determination of the student's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification;

(b) "Counseling services", which means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel;

(c) "Early Identification", which means the implementation of a formal plan for identifying a disability as early as possible in a student's life;

(d) "Medical services", which means services provided by a licensed physician to determine a student's medically related handicapping condition which results in the student's need for special education and related services;

(e) "Occupational therapy", which means:

(i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation,
(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost, and
(iii) Preventing, through early intervention, initial or further impairment or loss of function;

(f) "Parent counseling and training", which means

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assisting parents in understanding the special needs of their child and providing parents with information about child development;

(g) "Physical therapy", which means services provided by a qualified physical therapist;

(h) "Psychological services", which means:

(i) Administering psychological and educational tests, and other assessment procedures,
(ii) Interpreting assessment results,
(iii) Obtaining, integrating, and interpreting information about student behavior and conditions relating to learning,
(iv) Consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations, and
(v) Planning and managing a program of psychological services, including psychological counseling for students and parents;

(i) "Recreation", which means:

(i) Assessment of leisure function,
(ii) Therapeutic recreation services,
(iii) Recreation programs in schools and community agencies, and
(iv) Leisure education;

(j) "School health services", which means services provided by a qualified school nurse or other qualified person;

(k) "Social work services in schools", which means;

(i) Preparing a social or developmental history on a student with disabilities,
(ii) Group and individual counseling with the student and family,
(iii) Working with those problems in a student's living situation, such as home, school, and community, that affect the student's adjustment in school, and
(iv) Mobilizing school and community resources to enable the student to receive maximum benefit from the student's educational program;

(l) "Speech pathology", which means

(i) Identification of students with speech or language disorders,
(ii) Diagnosis and appraisal of specific speech or language disorders,

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders,

(iv) Provision of speech and language services for the habilitation or prevention of communicative disorders, and

(v) Counseling and guidance of parents, students, and teachers regarding speech and language development and disorders;

(m) "Transportation", which means travel:

(i) To and from school and between schools and off-campus training sites,

(ii) In and around school buildings, and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a handicapped student,

(iii) To and from field trips.

(9) Special Education.

(a) "Special education" means:

(i) Instruction provided at no cost to the parents, which is specially designed to meet the unique needs of a student with disabilities with "no cost" meaning that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nondisabled students or their parents as a part of the regular education program,

(ii) Classroom instruction, home instruction, and instruction in hospitals and institutions,

(iii) Physical education for the development of physical and motor fitness, fundamental motor skills and patterns, and skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports,

(iv) Vocational education directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree,

(v) Speech pathology if the service consists of specially designed instruction to meet the unique needs of a student with disabilities;

(b) "Special education" includes special physical education, adapted physical education, movement education, and motor development.

(10) "Special education decision-making process" means all procedures relating to the identification, evaluation, or educational placement of a student and the provision of a free, appropriate public education, including the appeal

procedures provided for in Regulations .14 and .15 of this chapter.

(11) "Students with disabilities" means those students who have been determined through appropriate assessment pursuant to Regulation .05C of this Chapter as having temporary or long-term special educational needs arising from cognitive, emotional, or physical factors, or any combination of these. Their ability to meet general educational objectives is impaired to a degree whereby the services available in the general education program are inadequate in preparing them to achieve their educational potential.

(12) "Students with disabilities" means those students who have been identified as having the impairments defined in the following paragraphs:

(a) "Deaf" means a hearing impairment which is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance;

(b) "Deaf-blind" means a concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the student cannot be accommodated in special education programs solely for deaf or blind students;

(c) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a student's educational performance but which is not included under the definition of "deaf" in §B(14)(a) of this regulation;

(d) "Mentally retarded" means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a student's educational performance;

(e) "Multihandicapped":

(i) Means concomitant impairments such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc., the combination of which causes such severe educational problems that the student cannot be accommodated in special education programs solely for one of the impairments,

(ii) Does not include deaf-blind students;

(f) "Orthopedically impaired":

(i) Means a severe orthopedic impairment which adversely affects a student's educational performance,
(ii) Includes impairments caused by congenital anomaly, for example, clubfoot, absence of some member, etc., impairments caused by disease, for example, poliomyelitis, bone tuberculosis, etc., and impairments from other causes, for example, cerebral palsy, amputations, and fractures or burns which cause contractures;

(g) "Other health impaired" means having:

(i) An autistic condition which is manifested by severe communication and other developmental and educational problems, or
(ii) Limited strength, vitality, or alertness, due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a student's educational performance;

(h) "Seriously emotionally disturbed" includes students who are schizophrenic but does not include students who are socially maladjusted unless it is determined that they are seriously emotionally disturbed, and means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors,
(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers,
(iii) Inappropriate types of behavior or feelings under normal circumstances,
(iv) A general pervasive mood of unhappiness or depression, or
(v) A tendency to develop physical symptoms or fears associated with personal or school problems;

(i) "Specific learning disability":

(i) Means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations,
(ii) Includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasic, but does not apply to

students who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage;

(j) "Speech or language impaired" means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a student's educational performance;

(k) "Visually handicapped":

(i) Means a visual impairment which, even with correction, adversely affects a student's educational performance,

(ii) Includes both partially seeing and blind students.

.03 State Responsibility.

A. State Plan. The "Maryland State Plan for Part B of the Education of the Handicapped Act, Fiscal Years 1988-90, as amended by Supplement No. 1 (1987), is adopted through incorporation by reference.

B. State Advisory Board. The State Superintendent of Schools shall appoint, with the approval of the State Board of Education, a State Advisory Committee for Special Education. This committee shall be composed of the following: individuals involved in or concerned with the education of handicapped students, handicapped individuals, teachers (special and general), parents of handicapped students, local school system officials, including building principals in general education, representatives from the State Departments of Human Resources and Health and Mental Hygiene, and administrators of programs for handicapped students. The State Advisory Committee shall advise the State Superintendent of Schools regarding unmet needs within the State in the education of handicapped students, regulations or bylaws to be promulgated regarding the education of handicapped students, and the development of programs for handicapped students. The term of appointment shall be 3 years.

C. Assurance. The State Department of Education shall assure that all students, birth through age 20, residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, assessed, and provided with a free, appropriate public education consistent with State and federal laws.

D. Review and Approval of Plans.

(1) The State Superintendent of Schools shall require the maintenance of a comprehensive plan for the provision of special education and related services for each public agency. This plan shall be updated, reviewed, and approved annually in accordance with Education Article: §§8-405 and 8-408, Annotated Code of Maryland.

(2) If the State Superintendent of Schools determines for any school year that a plan fails to provide a free, appropriate public education for any handicapped student, the Superintendent shall, in accordance with Education Article, §8-405, Annotated Code of Maryland, prepare a modification of the plan. The State Board of Education shall consider the modified plan and hear any appeals relative to the modification. The State Board of Education may not approve any modification which, in its judgment, deprives any handicapped student of a free, appropriate public education.

E. Interagency Collaboration. The State Department of Education, in collaboration with other State agencies, shall establish, implement, and maintain State interagency coordination to ensure the development of interagency planning and the implementation of programs for handicapped students.

F. Monitoring and Evaluation Activities. The State Superintendent of Schools shall be responsible for the development of policies and procedures for monitoring and evaluation activities which ensure compliance of all public agencies with the requirements of these regulations and State and federal laws. These procedures shall also provide for the evaluation of the effectiveness of the individualized education programs.

G. Personnel Certification and Training. The State Superintendent of Schools shall be responsible for the development and implementation of a comprehensive system of personnel development which shall include the in-service training of general and special education instructional personnel, related services personnel, administrators, and support personnel in all programs serving handicapped students. This training shall be available to both public and nonpublic facilities. Certification requirements shall be as set forth in COMAR 13A.12.01--.04.

H. General Supervision. Special education programs operated by public agencies shall be under the supervision of the State Superintendent of Schools, who shall ensure that these programs meet the minimum requirements as set forth in these regulations. Special education programs operated by nonpublic schools shall be approved in accordance with Regulation .07E.

I. Facilities. The State Department of Education shall develop minimum criteria for classrooms and facilities for special education programs.

J. Financial Records and Reports. Each local school system shall maintain records and submit reports of expenditures for special education programs in accordance with the "Financial Reporting Manual, Maryland Public Schools" which is incorporated by reference in COMAR 13A.02.01.03E.

.04 Responsibility of Public Agencies.

A. Provision of a Free, Appropriate Public Education. All students, from birth through age 20, residing within the jurisdiction of the local school system or living in a State operated program who are handicapped, regardless of the severity of the handicap, and who are in need of special education and related services shall be identified, assessed, and provided a free, appropriate public education consistent with these regulations.

B. Planning Responsibilities.

(1) Each public agency shall maintain a comprehensive plan which provides for the identification of students who may be in need of special education and related services and for the provision of a free, appropriate public education. The plan shall be updated annually in the manner and form prescribed by the State Superintendent of Schools and reviewed as provided under Regulation .03D.

(2) If a public agency determines that its share of monies, plus the State share, plus any additional aid, is insufficient to carry out the plan approved under the provisions of Education Article, §8-405, Annotated Code of Maryland, the public agency shall prepare a modification of the plan. This modification shall be submitted to the State Superintendent of Schools within 25 days after adoption of the public agency budget for the school year to which the modification applies, providing the modification does not deprive any handicapped student of a free, appropriate public education.

(3) Before development and submission of these plans or modifications, the public agency shall provide for public hearings, adequate notice of these hearings, and an opportunity for comment by the general public, consistent with the public agency's procedure for the adoption of policy.

C. Interagency Collaboration. Each public agency in collaboration with local and State agencies and other private and public resources shall establish, implement and maintain local interagency planning and implementation of programs for handicapped students.

D. Public Information. Each public agency shall provide the public with information regarding the special education program consistent with the agency's public information policy.

E. Personnel.

(1) Each public agency shall designate a person to be responsible for administration for the special educational program to ensure implementation of the provisions of these regulations.

(2) Each public agency shall designate a person to be responsible for the coordination and supervision of the special education instructional program. This person shall have the necessary training and background of experiences to perform these duties.

(3) Each public agency shall provide certificated educational personnel as specified in COMAR 13A.12.01 and .04, to ensure implementation of the provisions of these regulations. A public agency may establish additional personnel criteria consistent with State regulation.

(4) All education support personnel shall meet the certification requirements as specified in COMAR 13A.12.03 and COMAR 13A.12.04.

(5) All other personnel, including but not limited to, nurses, physicians, psychiatrists, occupational therapists, physical therapists, and social workers, shall hold all licenses required by the State to practice in the State. Qualifications for these personnel when working in educational programs as well as guidelines for their supervision, shall be developed jointly by the State Departments of Education and Health and Mental Hygiene.

(6) All aides, paid or volunteer, shall be at all times under the direct supervision of qualified staff. The duties and responsibilities of all aides shall be clearly defined in writing.

F. Facilities.

(1) Each public agency shall provide classrooms and facilities for programs and services for handicapped students which are at least equivalent to those provided for students in the general education program and

consistent with the minimum criteria as established under Regulation .03I.

(2) Each public agency shall provide facilities in accordance with State Finance and Procurement Article, §§2-501--2-511, Annotated Code of Maryland.

G. Assurance of Nondiscrimination to Parents. A public agency may not require parents of any handicapped student to perform duties not required of a parent of a student in a general school program.

H. Personnel Training. Each public agency shall be responsible for the implementation of a personnel development plan which includes the in-service training of general and special educational, instructional and related services, administrative, and support personnel.

.05 Identification.

A. Nondiscrimination in Evaluation and Placement. Testing and assessment materials and procedures used by public agencies for the purposes of evaluation and placement of handicapped students shall be selected and administered so as not to be racially or culturally discriminatory.

B. Screening.

(1) Each public agency, jointly with the local health agency, shall provide for continuous screening of school- and preschool-age students for problems which impede learning. These procedures shall be in accordance with Education Article, §7-403, Annotated Code of Maryland.

(2) A screening program shall be designed and conducted for all students of kindergarten age or upon first entry, and shall include but not be limited to:

(a) Information including the age at which developmental milestones were attained, existence of possible special education and related services needs, results of previous assessments and evaluations, history of placement in special education programs, and history of treatment received for disabilities (this information shall be sought from parents, as appropriate);

(b) A screening which includes the student's visual auditory, and motor functioning, separately or in integration.

(c) A language screening including receptive, inner, or symbolic and expressive language in English or in the student's primary language if it is other than English, and academic areas where appropriate,

(3) A comprehensive screening, similar to the kindergarten screening (see §B(2), above), but adjusted for the student's development level, shall be provided to students within 30 calendar days of a request from the parents or school personnel.

(4) Each public agency and local department of health shall use screening personnel who are under the direct supervision of licensed, approved, or board-registered personnel in a specialty area qualifying them to do the specific screening which is being performed.

(5) If a student is identified as potentially in need of special education and related services, the student shall be referred promptly to the Admission, Review, and Dismissal Committee for appropriate assessments in accordance with §C, below.

C. Assessment.

(1) Each public agency shall provide an appropriate educational assessment in the student's primary language for all students identified through established screening procedures as potentially in need of special education and related services. This assessment shall be written and consist of reading, math, spelling, written and oral language, and perceptual motor functioning, as appropriate.

(2) The following assessments shall be provided in addition to the required educational assessment as appropriate:

(a) An assessment of cognitive factors shall include one or more of the following: psychological, speech or language, or both, as appropriate, and shall be administered by a professional certified in the specialty area of the State Department of Education;

(b) An assessment of emotional factors shall include one or more of the following:

(i) A psychiatric assessment by a licensed psychiatrist, or
(ii) A psychological assessment by a licensed psychologist or a State Department of Education certified school psychologist;

(c) An assessment of physical factors shall include one or more of the following as appropriate: medical, ophthalmological, audiological, neurological. They shall be administered by individuals licensed in the respective specialty areas.

(3) Each assessment shall include, in addition to any matters required by federal regulation:

(a) A statement which describes the student's performance as it deviates from developmental milestones, or general education objectives, or both, as appropriate;

(b) A statement of criteria including tests, evaluation materials and procedures which may be used to establish the eligibility for special education and related services;

(c) The signature and title of the individual who has conducted the assessment;

(d) When evaluating a student suspected of having a specific learning disability, in addition to the requirements of §C(1) and (2):

(i) At least one member of the Admission, Review, and Dismissal Committee other than the student's regular teacher shall observe the student's performance in the regular classroom setting,

(ii) In the case of a child of less than school age or out of school, an Admission, Review, and Dismissal Committee member shall observe the child in an environment appropriate for a child of that age.

(4) The assessment information is used by the Admission, Review, and Dismissal Committee in carrying out its responsibilities for the determination of eligibility and development of the individualized education program.

(5) Any assessment may be waived, if a comparable assessment has been completed during the 6 months before the time of the scheduled assessment and made available to the Admission, Review, and Dismissal Committee, and the parents and public agency Admission, Review, and Dismissal Committee have agreed to the waiver.

D. Additional Procedures When a Student is Suspected of Having a Specific Learning Disability.

(1) An Admission, Review, and Dismissal Committee ma determine that a student has a specific learning disability if the:

(a) Student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in §D(1)(b), when provided with learning experiences appropriate for the student's age and ability levels; and

(b) Committee finds that a student has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression,
(ii) Listening comprehension,
(iii) Written expression,
(iv) Basic reading skill,
(v) Reading comprehension,
(vi) Mathematics calculation, or
(vii) Mathematics reasoning.

(2) The Admission, Review, and Dismissal Committee may not identify a student as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(a) A visual, hearing, or motor handicap;

(b) Mental retardation;

(c) Emotional disturbance; or

(d) Environmental, cultural or economic disadvantage.

(3) Written Report.

(a) The Admission, Review, and Dismissal Committee shall prepare a written report which includes a statement of:

(i) Whether the student has a specific learning disability;
(ii) The basis for making the determination;
(iii) The relevant behavior noted during the observation of the student;
(iv) The relationship of that behavior to the student's academic functioning;
(v) The educationally relevant medical findings, if any;
(vi) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and
(vii) The determination of the Committee concerning the effects of environmental, cultural, or economic disadvantage.

(b) Each Committee member shall certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the Committee member shall submit a separate statement presenting his or her conclusions.

E. Reevaluation. Each handicapped student shall be reevaluated based on procedures under §§C and D every 3 years or may be assessed more frequently if conditions warrant or if the parent or teacher requests reassessment.

F. Record Keeping. Each public agency shall establish procedures to ensure the maintenance of a current census of all handicapped students, from birth through the age of 20, who require special education and related services. This census, and other such record keeping as required, shall be reported to the State Department of Education and maintained in accordance with COMAR 13A.08.02 and 34 CFR Part 99.

.06 Programming--Program Standards: Statement of Purpose, Philosophy, and Objectives.

A. A public agency shall develop a written statement describing the purpose, philosophy, and objectives of the special education program.

B. The statement in §A of this regulation shall:

(1) Include the primary reasons for which the program is established and the goals toward which the program's efforts are directed; and

(2) Be sufficiently explicit to facilitate an evaluation in terms of what the program is striving to accomplish and the extent to which it is meeting the needs of the students who are enrolled.

C. The statement of purpose, philosophy, and objectives shall be used as guidance on such matters as the educational needs and number of students to be served, the instructional programs to be offered, and the services to be provided students, as well as selection of faculty and staff, design and use of facilities, financing, and organization.

.07 Programming--Days and Hours of Operation.

A. A day of instruction for an individual student may be modified according to the student's age and unique educational needs only as determined by the Admission, Review, and Dismissal Committee which is described in Regulation .08 of this chapter.

B. Each public agency shall develop a yearly calendar, before the opening date, which includes the dates for the opening and closing of school, days of instruction, holidays, vacations, and other pertinent events or activities in the schedule for the year. The yearly calendar shall be consistent with the required 180-day school year as defined in Education Article, §7-103, Annotated Code of Maryland, unless otherwise extended by the Admission, Review, and Dismissal Committee for an individual student pursuant to Regulation .09G(1)(d) and (2) of this chapter.

.08 Programming--Admission, Review, Dismissal Process.

A. Each public agency shall maintain an Admission, Review, and Dismissal Committee or Committees, which serves with the authority of the local superintendent of schools or other appropriate official, and is composed of the following:

(1) A chairperson designated by the local superintendent or other appropriate official;

(2) Individuals who:

(a) Are familiar with the student's current level of functioning, and

(b) Include a special educator and interdisciplinary personnel from the public agency and the local health department, and other public agencies, as appropriate; and

(3) Others considered appropriate, such as individuals expected to become deliverers of direct service to the student.

B. If a student is currently being served in a nonpublic school or State funded or operated institution, representatives from that program shall be invited to provide information relating to the student's educational needs. These representatives shall be informed 10 calendar days before scheduled meetings.

C. If a student is suspected of having a specific learning disability, the Admission, Review, and Dismissal Committee shall include at least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist or speech-language pathologist and:

(1) The student's regular teacher;

(2) If the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of that age; or

(3) For a child of less than school age, an individual certified to teach a child of that age.

D. The parents and the student, as appropriate, shall be notified at least 10 days before an Admission, Review, and Dismissal Committee meeting and requested to attend the meeting. The parents and student may be accompanied by others and shall be encouraged to participate in the meeting.

E. Responsibilities of the Admission, Review, and Dismissal Committee or Committees.

(1) Referral, assessment, and eligibility. The Committee shall:

(a) Receive all referrals of students identified as potentially in need of special education and related services.

(b) Arrange for appropriate assessment of the students in §E(1)(a) of this regulation in accordance with Regulation .05C and D of this chapter. Assessments shall be completed within 45 calendar days of referral.

(c) Review results of the assessments and determine the student's eligibility for special education and related services within 30 calendar days of completion of the assessments.

(2) Individualized education programs and placements.

(a) The Committee shall develop an individualized education program or designate other individuals who will be responsible for developing or completing the individualized education program, in accordance with Regulation .09 of this chapter, within 30 calendar days of the determination of the student's eligibility for special education and related services. If the Admission, Review, and Dismissal Committee designates other individuals to develop or complete the individualized education program, the Committee shall approve the individualized education program.

(b) The Committee shall determine all placements within the public agency based on the student's individualized education program and in accordance with the least restrictive environment. Unless a student's individualized education program requires some other arrangement, the student shall be educated in the school which the student would attend if not disabled. In selecting the least restrictive environment, consideration is given to any potentially harmful effect on the student or on the quality of services which the student needs. In selecting the least restrictive environment, the public agency shall ensure that the student is placed in a program as close as possible to the student's house.

(c) The Committee shall recommend all nonpublic placements to the State Department of Education in accordance with Regulation .12 of this chapter and Article 49D, §19, Annotated Code of Maryland.

(d) The Committee shall consider the travel time required to transport the student to the program when considering appropriate placements. Transportation shall be provided to students in public and nonpublic facilities in accordance with the individualized education program.

(3) Review. The Committee shall:

(a) Review student progress based upon the individualized education program in accordance with Regulation .09 of this chapter.

(b) Recommend modifications in the individualized educational program as necessary, including consideration of any assessment/testing accommodations needed as a result of a student's disability;

(c) Recommend dismissal from the special education program, if appropriate;

(d) Review student placement decisions in cases where information not previously available is presented to the Admission, Review, and Dismissal Committee.

(4) Notification. The Committee shall ensure that:

(a) Parents and students are notified of Maryland's graduation requirements as set forth in COMAR 13A.03.02 and the student's progress in meeting those requirements.

(b) Parents are notified of the availability of extended school year services.

F. Public Agency Responsibilities.

(1) The public agency shall develop procedures for notifying the parents in writing at least 10 days before the Admission, Review, and Dismissal Committee meets for the purpose of discussing a student's educational program or handicapping condition, or before a meeting to develop, review, or revise an individualized education program.

(2) The notice in §F(1) of this regulation shall:

(a) State the purpose, time, and location of the meeting and who will be in attendance, by position and name when possible. If the meeting is for purposes of developing, reviewing, or revising the individualized education program, the meeting shall be scheduled at a mutually agreed on time and place.

(b) Inform the parents of their right to attend the meeting, to be accompanied by others, and to participate as equal partners in the meeting.

(c) Be provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so.

(3) The public agency shall develop procedures for making and documenting reasonable efforts to inform parents of and involve them in the special education decision-making process. This includes providing for individual or conference telephone calls if neither parent can attend a meeting. If a meeting is conducted without a parent in attendance, the public agency must have a record of attempts to contact the parents, including two or more of the following:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received;

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(4) The public agency also shall develop procedures for:

(a) Securing written permission from the parent before assessment is initiated in accordance with Regulation .13 of this chapter.

(b) Informing parents of the assessment results and the student's potential need for special education and related services.

(c) Obtaining written permission for placement in accordance with Regulation .12 of this chapter, and for reporting information to the State Department of Education.

(d) Informing parents of the individualized education program review and reassessment schedule and process; and

(e) Reviewing, by the Admission, Review, and Dismissal Committee, information not previously available to the committee.

.09 Programming--Individualized Education Program.

A. The individualized education program is a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The goals, objectives, activities and materials, shall be adapted to the needs, interests, and abilities of each student.

B. The individualized education program shall be developed in a meeting including the following participants:

(1) A representative of the public agency, other than the student's teacher, who is qualified to provide, or supervise the provision of, special education;

(2) The parents;

(3) The student, when appropriate;

(4) The student's teacher or teachers;

(5) Other individuals at the discretion of the parent or agency; and

(6) For a student with disabilities who has been assessed for the first time, a person who is knowledgeable about the assessment procedures used with the student and is familiar with the results of the assessments.

C. The individualized education program shall be approved by the Admission, Review, and Dismissal Committee and the student's parents before the program is implemented. The individualized education program shall be implemented as soon as possible and not more than 30 school calendar days following its development. The parents shall be notified of their right to receive a copy of the individualized education program. Except for the initial placement, parent consent may not be required as a condition of any special education or related service to the student. When consent is requested but not provided by the parent of a student, the procedures in Regulation .13 of this chapter apply.

D. Program Content.

(1) The individualized education program for each student shall include:

(a) A statement of the student's special education needs and present levels of educational performance

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written in objective measurable terms;

(b) A statement of measurable annual goals and measurable short-term instructional objectives which represent a logical sequence of the major components of the annual goals;

(c) A statement of the specific special education and related services to be provided to the student, and the extent to which the student will be able to participate in general educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

(2) The requirements in §D(a) of this regulation may not be construed to cause any agency, teacher, or other person to be held accountable if a student does not achieve the growth projected in the annual goals or short-term goals and objectives.

E. The Admission, Review, and Dismissal Committee shall provide for a review of the progress of each student who is receiving special education and related services within 60 school days after the initial placement in special education.

F. If the review by the Admission, Review, and Dismissal Committee indicates that the initial placement was inappropriate or that different services are needed, the individualized education program shall be revised in accordance with this regulation.

G. Student Review.

(1) Additional review of the student's individualized education program and placement shall occur at least annually and shall be conducted to determine whether:

(a) The student has achieved the goals set forth in the individualized education program;

(b) The program the student is in should be specifically modified to render it more suitable to the student's needs:

(c) Education in a less restrictive environment can be achieved satisfactorily with the use of supplementary aids and services;

(d) The student is in need of extended school year services.

(2) In making its determination whether to provide extended year services pursuant to §G(1)(d) of this regulation, the Admission, Review, and Dismissal Committee shall consider, whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover these lost skills in a reasonable time.

(3) Extended school year services must be provided pursuant to a properly developed individualized education program as soon as possible and in accordance with requirements set forth in Regulation .10 of this chapter.

H. A written summary of the review in §G of this regulation shall be made available to the parents within 10 school days after the review is completed in accordance with Regulation .13 of this chapter.

.10 Programming--Intensities of Service and Placement.

A. Intensities of Service.

(1) An intensity of service is indicated by the number of hours a service is provided to a student with a disability. Intensities of service also establish caseloads or class sizes for the professionals who provide these services.

(2) The individualized education program shall designate appropriate intensity or intensities of services.

(3) Students with disabilities shall receive special education and related services appropriate to their educational needs in appropriate age and instructional groupings.

(4) Students may receive a variety of services concurrently at different intensities.

(5) Each public agency shall educate all students with disabilities in the least restrictive environment regardless of the intensities of services that are designated in their individualized education programs.

B. Least Restrictive Environment.

(1) Continuum of Alternative Placements.

(a) A public agency shall:

(i) Ensure that a continuum of alternative placements is available which shall include instruction in regular education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions in order to meet the needs of students with disabilities.

(ii) Develop additional placement options tailored to the needs of individual students with disabilities by modifying existing placement alternatives or by developing new placement alternatives.

(b) The Admission, Review, and Dismissal Committee shall, based on the student's individualized education program and in a manner consistent with this section, determine the least restrictive placement for each student.

(2) Placement. In providing or arranging for the provision of academic services, nonacademic and extracurricular activities, each public agency shall ensure that to the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are provided these services and activities with students who are not disabled, and that special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) Nonacademic Settings.

(a) A public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in those services and activities.

(b) In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and services and activities set forth in Regulation .02B(4) of this chapter, the public agency shall ensure that each student with disabilities participates with nondisabled students to the maximum extent appropriate.

C. Professionals may provide service concurrently at more than one intensity. Caseloads or class sizes shall be adjusted accordingly based upon the full-time equivalent assignment. In establishing the individual professional caseload, consideration should be given to the individual education program of the students served by the professionals and the amount of time needed for consultation among general and special education teachers and other professionals to help the education of students in the least restrictive environment.

D. A public agency shall maintain a complete description of services which shall be available to the public.

E. Intensities of Service.

(1) The intensities of service set forth in §E(2)--(6) of this regulation may be considered appropriate for the student who has been identified through the special education decision-making process as having an educational disability as defined in Regulation .02B(13) and (14) of this chapter:

(2) Intensity I may be considered appropriate for the student who may be appropriately served in the general education program receiving supplementary services. Intensity I is designed to assist the nonspecial education teacher in the development and implementation of a special education individualized education program through the provision of supplementary services which are not provided in the general program. Services provided include direct or indirect instructional consultation services to the teacher, or special materials, or both, and equipment. The minimum staffing ratio for Intensity I service shall be one full-time equivalent professional for each 150 nonspecial education teachers employed by the public agency.

(3) Intensity II may be considered appropriate for the student who may be appropriately served by receiving service through the special education program not to exceed an average of 1 hour per school day. Intensity II is designed to provide a program of special educational intervention directly to the student. This intensity is designed to meet the special educational needs of a student with a disability who requires direct special educational intervention not provided by the general education program. Services are provided by a professional on an intermittent or continuous basis, for example, vision, speech, and language. The instruction may be given on an individual basis or in small groups. In addition, personnel serve as a resource to the teacher in suggesting activities which would enhance the student's achievement. The maximum case load for Intensity II service shall be an average of 60 students with disabilities with special educational needs per each full-time equivalent professional.

(4) Intensity III may be considered appropriate for

the student who may be appropriately served by receiving special educational services not to exceed an average of 3 hours per school day. Intensity III is designed to provide periods of more intensive special education services, for example, academic, vision, speech, language, on a regular basis. In addition, personnel serve as a resource to the teacher in suggesting activities which could enhance the student's achievement. The maximum case load for Intensity III services shall be an average of 20 different students with disabilities with special educational needs per full-time certified special education teacher or an average of 30 different students with disabilities, if a full-time aide is also provided.

(5) Intensity IV may be considered appropriate for the student who may be appropriately served by receiving special educational services for more than 3 hours per day. Services include special education provided by a special education teacher, and related services as described in the individualized education program. The maximum class size or caseload for Intensity IV service at the elementary level shall be an average of 10 students with disabilities with special educational needs per full-time teacher or an average of 13 students if a full-time aide is also provided. The maximum class size or caseload for Intensity IV service at the secondary level shall be an average of 12 students with special educational needs per full-time certified special education teacher or an average of 15 students, if a full-time aide is provided.

(6) Intensity V may be considered appropriate for the student who requires a more intensive special education program than Intensities I--IV. The maximum class size or caseload for Intensity V service for students with disabilities shall be an average of 6 students with disabilities with special educational needs per full-time certified special education teacher or an average of 9 if a full-time aide is provided. The maximum class size or caseload for Intensity V service for students with significant physical impairments shall be an average of 7 students with disabilities per full-time certified special education teacher and a full-time aide.

(7) Intensity VI may be considered appropriate for the student who requires special education programming and related services in a residential setting. This includes 24-hour special education and related services if determined by the Admission, Review, and Dismissal Committee to be necessary to implement the student's individualized education program. Any recommendation for placement into a public or private residential facility must be referred to the local coordinating council pursuant to Article 49D, §19, Annotated Code of Maryland.

The maximum class size or caseload for Intensity VI service shall be an average of 4 students with disabilities with special educational needs per full-time certified or licensed professional or an average of 7 per class where an aide is present.

F. Other Program Provisions.

(1) Home and hospital instruction is designed to provide short-term itinerant instructional services to students with physical disabilities or in emotional crisis. The services provided are set forth in §F(2) and (3) of this regulation.

(2) Instructional service is provided to a student who is being maintained at home or in a hospital for purposes of convalescence or treatment, and who is restricted by a physician for reasons of physical health from attending a school-based program. The period of time this program will be provided shall vary with the severity of the medical restrictions.

(3) Instructional service is provided to a student in emotional crisis who is being maintained at home or in a hospital, and is available only on an emergency basis. This service may not exceed 60 consecutive school calendar days, minimum of 6 hours/week, pending placement in an established educational program, unless pursuant to an approved individualized education program.

(4) Early childhood programs are designed to provide a program of educational intervention directly to the students with disabilities from birth through 4 years old, to the parent, or both. Levels of service as delineated above shall be available as appropriate. In addition, parent-infant programs using itinerant personnel may be provided. The itinerant teacher serves as a resource to the parent in suggesting activities which would enhance the student's development. The maximum case load for parent-infant service is 10 families to each full-time equivalent professional.

.11 Programming--Modifications.

If modifications, such as supplementary aids and services, to the regular education program are necessary to ensure the student's participation in that program, those modifications shall be described in the student's individualized education program.

.12 Nonpublic Placements.

A. Applicable Law. The placement of students with disabilities into approved nonpublic special education programs shall be in accordance with Education Article, §8-409, and Article 49D, §§13--20, Annotated Code of Maryland, and the requirements of this chapter. Placements are for a period of not more than 1 year, ending June 30 of each year and shall be reviewed annually.

B. Student Eligibility Criteria. A student with disabilities may be considered for nonpublic placement when the:

(1) Student is determined by State-approved local school system procedures to be a student with disabilities who requires Intensity V or VI services;

(2) Responsible local school system or State and local agencies, or both, singularly or in combination, cannot offer the appropriate special education and related services required to provide an appropriate program for the student; and

(3) Student is being recommended for placement into an approved nonpublic special education program that is appropriate to the student's verified educational needs and in the least restrictive appropriate setting.

C. Procedural Safeguards. Local school systems which place students in approved nonpublic special education programs shall ensure that the students have all the rights they would have if served by the local school system, including procedural safeguards with respect to identification, assessment, individualized education programs, and placement.

D. State Approval Required.

(1) If a nonpublic placement requires a State contribution under Education Article, §8-417.3(d)(2), Annotated Code of Maryland, the State Department of Education shall approve:

(a) The nonpublic special education program;
(b) The placement of the student into the program;
(c) The cost of the program; and
(d) Amounts of payment or reimbursement.

(2) If a nonpublic placement is recommended or requested after the beginning of a year and would require an additional State contribution under Education Article, §8-417.3(d)(2), Annotated Code of Maryland, or if the annual cost of tuition would require a State contribution, the placement is subject to State Department of Education approval in accordance with Education Article, §8-409, Annotated Code of Maryland, and this regulation.

E. Program Approval Criteria.

(1) An in-State nonpublic school offering a special education program may have the program approved if the school:

(a) Has been issued a certificate of approval by the Division of Certification and Accreditation for its special education program;

(b) Meets the requirements of COMAR 13A.09.09.18B and D regarding certification of personnel;

(c) Meets the requirements of COMAR 13A.09.09.21A and B regarding the school day and year; and

(d) Has written policies and procedures for:

(i) Participating in the development of an individualized education program with the local school system which referred the student for placement and promptly notifying the local school system if the individualized education program needs to be revised after a student is enrolled, and

(ii) Dismissal of students, including promptly notifying the local school system which referred the student for placement and maintaining a student's placement during due process proceedings, unless the individualized education program provided for an alternative placement during due process proceedings and the parent has agreed to the alternative placement.

(2) An out-of-State nonpublic school offering a special education program may have its program approved if there is a demonstrated need for the program at the school, and the school:

(a) Has its special education program approved by the State educational agency where the school is located;

(b) Has been determined by a Maryland interagency team to substantially meet the requirements of COMAR 13A.09.09, except as provided in §E(2)(c) of this regulation;

(c) Meets the requirements of COMAR 13A.09.09.18B and D or equivalent standards established by the State educational agency where the school is located for certification of personnel; and

(d) Has written policies and procedures as specified in §E(1)(d) of this regulation.

F. Home Circumstances. When it has been determined by the Admission, Review, and Dismissal Committee, on the basis of verified evidence that a student should not attend the appropriate local school system special education program because of the condition of the student's home circumstances, the public agency may approve the placement of a student in an alternate special education program in cooperation with the student's family and the appropriate State or local agency responsible for the student's care, and may authorize the reimbursement of the cost of the education program up to the amount equivalent to the cost of the school program the student would have attended while living at home. The local school system and the State Department of Education shall seek the support of other local and State agencies to provide any additional funds for the placement.

G. Procedures.

(1) Applications for approval of nonpublic placements shall be made on forms prescribed by the State Department of Education. The forms and documentation required by the State Department of Education shall be forwarded by the local school system to the State Department of Education together with the recommendations of the local school system and within times prescribed by the State Department of Education. The local school system shall notify the parents of these recommendations and the identity of all documents supplied to the State Department of Education, and shall supply the parents with copies of all recommendations and documents, upon request, at actual cost. Parents may supply the State Department of Education through the local school system, with additional information or documentation if they wish to do so.

(2) Local school systems shall notify parents of their hearing rights under this subsection and under Regulations .14 and .15 of this chapter. If requested, parents shall be entitled to a local level hearing under Regulation .14 of this chapter, with respect to recommendations or decisions of the local school system regarding nonpublic placements, but the nonpublic placement shall be subject to approval or disapproval by the State Department of Education under this regulation. If this local level hearing is not requested, parents may request that forms and documentation shall be forwarded directly to the State Department of Education for approval or disapproval by the Department under this section. The decisions of the State Department of Education with respect to nonpublic placements under this section are subject to a State level hearing prescribed by Regulation .15 of this chapter, whether or not the decision was preceded by a local level hearing.

(3) The disapproval of a nonpublic placement that has

been approved previously by the State Department of Education may not be effective for a subsequent year until applications for administrative and judicial review prescribed by 20 U.S.C. §1415 or Education Article, §8-415, Annotated Code of Maryland, if any, have resulted in a final decision.

.13 Prior Notice and Parent Consent.

A. The procedures in §§B - D of this regulation are established to assure that students with disabilities and their parents are guaranteed appropriate safeguards with respect to their right to receive notices and provide consent.

B. Prior Notice. A public agency shall give the parents prior written notice when the agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of a student, or the provision of a free, appropriate public education to a student; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of a student or provision of a free appropriate public education to a student.

C. Content of Notice.

(1) Notice under §B of this regulation shall contain the following

(a) A full explanation of all of the procedural safeguards available to the parents as set forth in 34 CFR 300.501--300.514 including, but not limited to, their right to:

(i) Participate as equal partners in Admission, Review, and Dismissal Committee meetings and meetings to develop, review, and revise the individualized education program.

(ii) Be accompanied by other persons during the meetings,

(iii) Consent to assessment procedures and to the initial individualized education program and placement and to changes in the individualized education program and placement, and be informed of the procedures that apply if consent is not provided,

(iv) Receive a copy of the student's individualized education program,

(v) Obtain an independent assessment of the student at the parent's expense and to have the results considered by the Admission, Review, and Dismissal

Committee,

(vi) Obtain an independent assessment at public expense, if the parents disagree with an assessment by the public agency, and to have the results considered by the Admission, Review, and Dismissal Committee, provided that the public agency may initiate a hearing to show that its assessment is appropriate and is not required to pay for the independent assessment if it obtains a favorable hearing decision,

(vii) Examine the student's education records, and

(viii) Request a due process hearing;

(b) A description of the action proposed or refused by the public agency, and an explanation of why the public agency proposed or refused to take this action, and a description of any options the public agency considered and the reasons why those options were rejected;

(c) A description of each assessment procedure, test, record, or report the system used as a basis for the action proposed or refused;

(d) A description of any other factors which are relevant to the action proposed or refused; and

(e) A copy of the proposed individualized education program when procedures in §E of this regulation are implemented.

(2) The notice shall be:

(a) Written in language understandable to the general public;

(b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so, and if the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure that:

(i) The notice is translated orally or by other means to the parents in their native language or other mode of communication,

(ii) The parents understand the content of the notice, and

(iii) There is written evidence that the requirements in §C(2)(b)(i) and (ii) of this regulation have been met.

D. Parent Consent

(1) Public Agencies shall obtain prior consent by the

parent or parents before conducting an assessment procedure under Regulation .05C or D of this chapter initially placing a student in special education, or initiating a change in the student's individualized education program or placement.

(2) "Consent" means that the parent:

(a) Has been fully informed in a timely fashion of all information relevant to the activity for which consent is sought, in the parent's native language, or other mode of communication;

(b) Understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, which will be released and to whom; and

(c) Understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(3) When parent consent is not provided, the procedures in §E of this regulation apply.

E. Procedures When Parent Consent is not Provided.

(1) A public agency shall request a local due process hearing and notify the parent of the request when the parent:

(a) Gives written notice refusing consent to an assessment, an initial individualized education program or placement, or a change in an individualized education program or placement; or

(b) Does not respond to a written request to conduct an initial assessment or an initial individualized education program or placement.

(2) The hearing officer shall review the proposed action. If the hearing officer approves the proposed action, the public agency shall notify the parents of the decision and inform the parents when the proposed action will be implemented. The proposed action shall be implemented not sooner than 30 days or later than 45 days from the date of the decision unless the parent files an appeal under Regulation .15 of this chapter.

(3) When the parent does not respond to written notice from a public agency to conduct a reassessment or to revise or implement a change in an individualized education program or placement, the public agency shall

initiate the proposed action after providing prior written notice to the parents in accordance with this regulation. The notice shall provide the parents 20 school days to appeal the proposed action. The proposed action shall be implemented by the local school as soon as possible following the 20-day appeal period, but not later than 30 school days from the date of the notice.

.14 Due Process Hearings -- Local

A. A parent or a public agency may initiate a local due process hearing concerning the identification, evaluation, or educational placement of a student or the provision of a free, appropriate public education to the student. Public agencies shall establish and implement hearing procedures that assure compliance with the requirements of applicable federal law, Education Article, §8-415, Annotated Code of Maryland, and this regulation when a request is made in writing for a due process hearing.

B. The parents shall have the right to inspect and copy at reasonable times, both before any hearing and otherwise, all records of the public agency and its agents and employees, pertaining to the student, including all tests or reports upon which the proposed action may be based, and such other relevant records pertaining to the proposed action.

C. A party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with knowledge or training with respect to the problems of students with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

D. A parent has the right to obtain an independent assessment of the student, the expense to be borne in accordance with applicable federal regulations. A parent also has the right to obtain independent assessment at private expense. The results of these assessments shall be considered by the public agency in any placement decision and may be presented as evidence at a hearing under §H of this regulation.

E. The public agency shall provide to the parents, on request, information about where an independent assessment may be obtained.

F. The public agency shall inform the parent of any free or low-cost legal or other relevant services available in the area, including information regarding possible reimbursement of attorneys' fees incurred as a result of due process hearings or court action.

G. A parent may be reimbursed for attorneys' fees under certain circumstances, in accordance with federal law, 20 U.S.C. §1415(e)(4).

H. Hearing Requirements.

(1) Hearings held pursuant to these regulations shall be conducted at a time and place reasonably convenient to the parent and student and in accordance with the requirements of this section.

(2) The parent has the opportunity to present competent and relevant evidence, including but not limited to the results of independent assessments, both in documentary form and through witnesses. The public agency is not required to bear the responsibility for any fees which may be charged for evaluations or representation except as provided in these regulations and under applicable federal law and regulations and locally established policy.

(3) Procedures shall be adopted affording the parent the opportunity to require the attendance and testimony of employees of the public agency and witnesses who may have direct knowledge pertinent to the subject of the inquiry. In requiring employees to testify, parties to the hearing shall give consideration to minimizing interference with the regular duties of employees.

(4) The parent shall be afforded the opportunity to question witnesses called by the public agency.

(5) An individual who was directly responsible for the recommendation of the proposed action, or who has furnished significant advice or consultation in reference to the recommendation, may not serve as a hearing officer or member of a hearing panel. The hearing officer, or individuals included on the hearing panel, shall be knowledgeable in the fields and areas of significance to the educational review of the student. A hearing conducted pursuant to these regulations may not be conducted by an individual:

(a) Who is an employee of a public agency which is involved in the education or care of the child; or

(b) Having a personal or professional interest which would conflict with that individual's objectivity in the hearing.

(6) The hearing shall be closed unless the parent requests that the hearing be open. All those present

shall be identified for the record at the initiation of the hearing. Parents have the right to have their child attend. Upon request by either party, the hearing officer shall administer oaths to all witnesses.

(7) The public agency shall arrange for a written or electronic verbatim record of the hearing to be made available to the parent at no cost.

(8) The decision of the hearing officer or panel shall be based on the testimony and documented information on the record at the hearing before the hearing officer.

(9) It is the initial responsibility of the party proposing any action to present evidence which supports its appropriateness. Evidence opposing the action shall then be presented. The public agency has the responsibility for explaining the initial placement recommendation. A placement is considered appropriate if it provides special education and related services which:

(a) Are provided at public expense, with public supervision and direction, and without charge;

(b) Meet the standards of the State Department of Education;

(c) Are provided in conformity with the individualized education program;

(d) Meet the educational needs of the student; and

(e) Cannot be provided satisfactorily in a less restrictive environment with the use of supplementary aids and services.

(10) The hearing officer or panel may request an independent assessment, which is at public expense

(11) A party has the right to prohibit the introduction of any evidence at a hearing that has not been disclosed to that party at least 5 days before the hearing.

I. After a hearing has been requested and held in the manner provided, the parents and their counsel or representative of record shall be informed in writing of the final decision, including a statement of the findings and conclusions upon which it is based. The findings and conclusions in any placement decision shall:

(1) Specify the nature and severity of any disabilities the student has;

(2) Specify any special educational needs the student has as a result of those disabilities;

(3) Specify any modification of the student's individualized education program required to provide the student with an appropriate program to meet those needs, pursuant to §H(9) of this regulation; and

(4) Identify a placement that will provide the student with the required appropriate program.

J. Right to Appeal. The parent shall also be informed of the right to appeal, and the procedure for taking that appeal to the next highest authority. The hearing shall be held and the decision shall be made and written notice of it provided within 45 calendar days from the request for the hearing. The hearing officer may grant a specific extension beyond this time period at the request of either party, but the time ma not be extended beyond 60 days unless good cause is shown.

K. When a hearing is requested concerning a proposed individualized education program or placement and the student is at the time enrolled in a free educational program, the public agency may not effect any change in the student's individualized education program or placement while the hearing is pending without the consent of the parent. The decision of the hearing officer or panel shall be implemented as soon as possible but not later than 30 school days after the decision, provided that during the pendency of appeals pursuant to Regulation .15B and K of this chapter, unless the public agency and the parent otherwise agree, the student shall remain in the then current educational placement of the student.

L. When a hearing is requested concerning a proposed placement action and the student is not currently receiving free educational services, the student shall be placed immediately if the parents consent, and a special expedited hearing schedule shall apply. In these cases, the hearing shall be held within 20 calendar days of request of the hearing, a written decision shall be issued within 15 calendar days of the hearing, and the decision shall be implemented within 15 school days of the decision unless specifically stayed pending appeal or otherwise by the hearing officer or panel, provided, that during the pendency of appeals, unless the public agency and the parent otherwise agree, the student shall remain in the student's then current educational placement, or, if the student is not yet receiving free educational services either because the parent did not consent to immediate placement pursuant to this section or for any other reason, the student shall be placed in the local public school program until all these appeals have been concluded, if the parent consents.

M. In a disciplinary case initially deemed to warrant suspension or expulsion pursuant to Education Article, §7-304, Annotated Code of Maryland, the procedures in COMAR 13A.08.01.11 shall be followed.

N. The public agency shall forward a copy of the local hearing decision to the State Department of Education within 30 days of receiving the final decision.

O. If either party appeals a local hearing decision, the public agency shall submit five copies of the entire hearing record, including the written or electronic verbatim record of the local hearing, to the State Department of Education.

.15 Due Process Hearings--State.

A. When all local procedures for providing special education programs for a disabled student by the public agency have been exhausted, the public agency or the parent of the student may request in writing from the State Board of Education a review of the case as it related to the identification, evaluation, or educational placement of the student or the provision of a free, appropriate public education to the student. Any request for a review shall be made within 30 calendar days of the mailing of the final decision to the party appealing the decision. Hearings regarding State Department of Education approval of nonpublic placements shall initiate at the State level, contents of notice requirements shall be as described in Regulation .13 of this chapter. The procedure established here shall be administered by the State Department of Education in accordance with Education Article, §8-415, Annotated Code of Maryland.

B. Upon receipt of a written request for review, the State Department of Education shall provide an official application to the parent or public agency.

C. Review Hearing.

(1) The decision of the State Hearing Review Board shall be rendered not later than 30 days after the receipt of the written request for the hearing. The State Hearing Review Board may grant specific extensions of time beyond the 30 day period by the time may not be extended beyond 60 days unless good cause is shown.

(2) The notice of the hearing shall include the time, date, and place at which the review hearing will occur. If the review hearing involves oral argument or testimony, the hearing shall be conducted at a time and place

reasonable convenient to the parents and student involved.

D. A parent has the right to inspect and copy, at reasonable times, all records of the State and public agency, its agents and employees, pertaining to the student, including all documents which will be considered by the State Hearing Review Board.

E. A parent has the right to be represented by counsel or other individuals at any stage during the hearing process.

F. The hearing shall be closed unless the parent requests that the hearing be open. Those present at the request of the parent or the public agency shall be identified at the initiation of the hearing. A parent has the right to have the parent's child attend.

G. Formal Hearing Procedures.

(1) The State Hearing Review Board, at the scheduled time, date, and place, may hear testimony from either of the parties pertaining to issues before it. Each side shall be afforded a reasonable time to present its case. Upon request by either party, the State Hearing Review Board shall administer oaths to all witnesses.

(2) The decision of the State Hearing Review Board shall be based on the information presented on the record at the State hearing.

(3) A party to the hearing has the opportunity to present competent and relevant evidence,both in documentary form and through witnesses, and to require the attendance of State Department of Education and public agency employees who may have knowledge pertinent to the subject matter of the hearing.

(4) A party to the hearing has the right to compel the attendance of witnesses and shall be afforded the opportunity to question and cross-examine witnesses called by the State Hearing Review Board or any other party at the hearing.

(5) A party has the right to prohibit the introduction of any evidence at a hearing that has not been disclosed to that party at least 5 days before the hearing.

(6) Transcriptions of the proceedings shall be made available at no cost to the parent within 45 calendar days. Requests for transcriptions shall be made in writing to the State Superintendent of Schools.

H. State Hearing Review Board Membership.

(1) An individual may not serve as a member of the State Hearing Review Board who:

(a) Is a member of a public agency or an employee of an agency involved in the education or care of the student, a full-time employee of the State Department of Education, or a member of the State Board of Education;

(b) Has participated in the previous assessment, evaluation, provision of educational services, or in the decision process to deny services made by the public agency; or

(c) Has an interest conflicting with objectivity.

(2) The hearing review board shall consist of not less than three persons.

(3) The chairman of a State Hearing Review Board shall be:

(a) Knowledgeable in the field of special education; and

(b) Appointed by the State Superintendent of Schools.

I. The State Hearing Review Board shall:

(1) Examine the entire hearing record;

(2) Ensure that the procedures at the local hearings were consistent with the requirements of due process;

(3) Seek additional evidence if necessary;

(4) Have the authority to confirm, modify, reject, or prescribe alternate special education programs for the student based on the record before the State Hearing Review Board.

J. The State Hearing Review Board has the authority to require a complete and independent assessment, evaluation, and determination of educational programs by qualified persons, the cost of which shall be paid by the State Board of Education.

K. A final decision shall be rendered by a majority of the State Hearing Review Board members. The decision shall specifically enumerate the findings and conclusion of the State Hearing Review Board. The chairman shall report the decision in writing, signed by the members of the State Hearing Review Board, to the State Department of Education. The decision shall be mailed to each of the parties within the timelines prescribed in §C(a) of this regulation.

L. The State Hearing Review Board decision is final, unless a party brings a civil action.

M. An appeal of the decision of the State Hearing Review Board may be made to the circuit court for the county in which the student resides. An appeal may also be made to a district court of the United States without regard to the amount in controversy. If the decision of the State Hearing Review Board is not fully implemented, the aggrieved party may enforce it through a proceeding in the appropriate court.

N. The State shall, after removing personally identifiable information, transmit to the State Advisory Committee the decision of the hearing officers or panel and also make decisions available to the public, in a manner consistent with State and federal confidentiality requirements.

.16 Parent Surrogates.

A. Education Article, s8-414, Annotated Code of Maryland, requires that parent surrogates be provided for students under certain circumstances. Public agencies responsible for providing special education services to students with disabilities shall establish and maintain policies and procedures for the recruitment, training, assignment, and reimbursement, if necessary, of parent surrogates consistent with this regulation.

B. Definitions. In this regulation, the following terms have the meanings indicated:

(1) "Parent" means an individual defined in Regulation .02B(5) of this chapter. For purposes of this regulation, "parent" does not include a parent surrogate.

(2) "Parent surrogate" means a person who is appointed by the State Superintendent of Schools to act in place of a parent of a student in the educational decision-making process.

(3) "Reasonable efforts" to identify and locate the parents means contacting the agency with responsibility to care for the student, known relatives of the student, and other persons interested in the student.

(4) "Unavailable" means that a public agency, after reasonable efforts, cannot locate the physical whereabouts of the parent.

(5) "Unknown" means that a public agency, after reasonable efforts, cannot identify the parent.

(6) "Ward of the State" means a student for whom a State or local agency or official has been appointed legal guardian, or who has been committed by a court of competent jurisdiction to the legal custody of a State or local agency or official with the express authorization that the State or local agency or official make education decisions for the student.

C. Student Eligibility Criteria. A public agency shall request that the State Superintendent of Schools appoint a parent surrogate to represent a student in the special education decision-making process when the student is under 21 years old and has been determined through appropriate procedures, pursuant to Regulation .05C of this chapter, to be disabled and in need of special education or is believed to be disabled and in need of special education, if the:

(1) Student is a ward of the State; or

(2) Parents of the student are unknown or unavailable.

D. Application for Appointment of Parent Surrogate. A request to the State Superintendent of Schools for the appointment of a parent surrogate under §C of this regulation, shall include:

(1) The name, date of birth, sex, legal domicile, and present residence of the student;

(2) A statement that the student is eligible for the appointment of a parent surrogate in accordance with sC of this regulation;

(3) Documentation, as applicable, of the efforts made to identify the parent if unknown or to locate the parent if unavailable; and

(4) The name and qualifications of the proposed parent surrogate who the public agency considers to be qualified to represent the student in the educational decision-making process.

E. Parent Surrogate Qualifications.

(1) The public agency requesting the appointment of a parent surrogate shall ensure that the individual proposed has:

(a) No interest that conflicts with the interest of the student to be entrusted to that person; and

(b) Knowledge and skills that ensure adequate representation of the student.

(2) Training in the knowledge and skills necessary to ensure adequate representation of the student shall be provided to the proposed parent surrogate, if needed, by the public agency making the proposal.

(3) A parent surrogate may not be an employee of a public agency involved in the education of the student entrusted to that parent surrogate.

F. Appointment of Parent Surrogate.

(1) When a public agency files a request for the appointment of a parent surrogate, the State Superintendent of Schools shall appoint a parent surrogate if the Superintendent finds that the:

(a) Student is eligible for the appointment of a parent surrogate in accordance with §C of this regulation; and

(b) Proposed parent surrogate is qualified to represent the student in the educational decision-making process in accordance with §E of this regulation.

(2) If the State Superintendent of Schools finds that the student is not eligible for the appointment of a parent surrogate in accordance with §C of this regulation, the Superintendent shall notify the requesting public agency of this finding and specify the reasons in writing.

(3) If the State Superintendent of Schools finds that the proposed parent surrogate is not qualified to represent the student in the special education decision-making process in accordance with §E of this regulation or this section, the Superintendent may:

(a) Request the public agency to propose another parent surrogate who is qualified; or

(b) Select and appoint a parent surrogate who is qualified.

(4) The State Superintendent of Schools shall make a final selection or rejection of a parent surrogate within 10 days after the Superintendent receives a request which includes appropriate eligibility documentation, in accordance with §D of this regulation, from a public agency.

G. Term of Appointment.

(1) Once appointment is approved by the State Superintendent of Schools, the student entrusted to the parent surrogate shall be represented by the parent surrogate in the special education decision-making process until the student is no longer in need of special education or until the parent of the student resumes responsibility for representing the student in the special education decision-making process.

(2) A parent surrogate may resign at any time and shall give the public agency sufficient notice so that a new parent surrogate may be appointed to represent the student.

H. Termination.

(1) A public agency may request the State Superintendent of Schools to terminate the appointment of a previously assigned parent surrogate if the public agency determines that the parent surrogate:

(a) is not properly performing the duties of a parent surrogate; or

(b) Has an interest that conflicts with the interest of the student entrusted to the parent surrogate.

(2) When a public agency requests that the State Superintendent of Schools terminate the appointment of an individual as a parent surrogate, that agency should state the reasons for the action and submit the name and qualifications of another individual who is proposed to be assigned as the new parent surrogate.

I. Immunity From Civil Liability.

(1) A parent surrogate is not liable to the student entrusted to that parent surrogate or to the parent of the student for any damages that result from acts or omissions of that parent surrogate constituting ordinary negligence.

(2) This immunity does not apply to liability covered by any applicable insurance, to the extent of that coverage, or to acts or omissions constituting gross, willful, or wanton negligence.

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Survey of Students with Disabilities in Out of State Placements: A Sample of States

APPENDIX C:

Washington Policies & Procedures Relating to Students with Disabilities in Out of State Placements

WA

Regulatory Guidance Letter 95-001

SCHOOL DISTRICT'S RESPONSIBILITY FOR RESIDENTIAL COSTS PLACEMENT - THE STATE'S ROLE

QUESTIONS SOURCE: John Mattson, Ph.D., Chairperson, Educational Service District 123, Special Education Directors

CITED CODES OF FEDERAL REGULATIONS:

34 CFR §300.403, 34 CFR §300.450, 34 CFR §300.452

1. *What is the responsibility of a local school district for residential costs for students placed at a residential treatment facility (in or out of state), if the school district has not been involved in the placement decision?*

Response to Question:

If the student is placed independently of the district, the district has no responsibility for the costs of such placements. However, if the district has not been aware of the student, referral to appropriate district personnel should be made. Districts do have responsibility for providing genuine opportunities for participation in ancillary services for students placed in private schools by others (34 CFR §300.452).

2. *What is the responsibility of a local school district for residential costs for students placed at a residential treatment facility (in or out of state), if the school district is or can provide an appropriate educational program for the student but placement is made regardless?*

Response to Question:

The response to question one would also be true for this question. If the district is not involved in the placement decision or can provide a program within the district or another district with which the district can contract, the placement expenses (including residential costs) would be at the expense of the placing agency. Special education rules would view this as a unilateral placement.

3. *Do agencies, other than public schools, assume the role of "the parent" (either custodial or non-custodial) for placement purposes under IDEA (Individuals with Disabilities Education Act) in placing students with disabilities in a private school or facility? This question is related to the provisions of 34 CFR §300.403 and §300.450.*

Response to Question:

The state does not assume the role of "the parent" for purposes of IDEA under any circumstance. The response is yes if the question is, "Does the placement of the child by another state agency constitute a 'unilateral placement' rather than a district placement?"

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Washington Administrative Code (WAC)

WAC 392-172-220 Contractual services. (1) School districts, severally or jointly, shall be authorized to:

(a) Enter into interdistrict agreements with another school district(s) pursuant to RCW 28A.335.160, 28A.225.250, 28A.225.260, and chapter 392-135 WAC; and

(b) Contract with nonpublic and public school agencies for special education and related services for special education students if the school district establishes that it cannot provide an appropriate education for the special education student within the district or another school district.

(2) In the case of a cooperative delivery of services by a school district to a special education student at a center for the furtherance of research and training in disabling conditions as established pursuant to RCW 28B.20.410 through 28B.20.414, as now or hereafter amended, or other such centers as may be established at other public institutions of higher education, as defined in RCW 28B.10.016, the school districts and other public agencies shall establish that the parent(s) or adult student has:

(a) Given written approval for delivery of services to the student at such center despite the existence of an appropriate education for the student within the district or another school district; and

(b) Has agreed that such delivery of services would equal or substantially equal the services available in the school district.

[Statutory Authority: Chapter 28A.155. 95-21-055 (Order 95-11), § 392-172-220, filed 10/11/95, effective 11/11/95.]

WAC 392-172-222 Approval of nonpublic and public school agencies. A school district or other public agency shall neither provide a student with services in a nonpublic or public school agency nor award a contract to a nonpublic or public school agency until the nonpublic or public school agency has been approved by the state board of education. Approval of such agencies shall be made in accordance with the following procedures:

(1) The school district or other public agency shall establish that all requirements imposed by this chapter for contracting with a nonpublic or public school agency can be met and shall forward the nonpublic or public school agency's application to the superintendent of public instruction or designee;

(2) The superintendent of public instruction or designee shall recommend approval or disapproval of the agency to the state board of education; and

(3) The superintendent of public instruction or designee shall notify the requesting school district or other public agency and nonpublic or public school agency of approval or disapproval.

[Statutory Authority: Chapter 28A.155. 95-21-055 (Order 95-11), § 392-172-222, filed 10/11/95, effective 11/11/95.]

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WAC 392-172-224 School district or other public agency responsibility when contracting for the delivery of services in a nonpublic or public school agency. Any school district or other public agency contracting with an approved nonpublic or public school agency for special education and/or related services on behalf of a special education student shall:

(1) Initiate and conduct a meeting with appropriate personnel and the student's parent(s) to develop the student's individualized education program. The district or other public agency shall assure that a representative of the nonpublic or public school agency attends the meeting or in some other way assure participation by the nonpublic school agency. Meetings to review or revise the student's individualized education program after the student has been placed shall be initiated and conducted by the nonpublic or public school agency at the discretion of the school district or other public agency. The district or other public agency shall assure that both the parent(s) or the adult student and the nonpublic school agency are represented in any decision concerning the student's individualized education program and agree to proposed changes in the program before those changes are implemented. The responsibility for compliance with this section lies with the school district or other public agency.

(2) Develop a written contract which shall include, but not necessarily be limited to, the following elements:

(a) Names of the parties involved;

(b) The name(s) of the student(s) with disabilities for whom the contract is drawn;

(c) Location and setting;

(d) Description of program administration and supervision;

(e) Designation of coordinator of the services to be provided by the school district or other public agency and the contractor;

(f) Assurance of compliance with staff certification requirements;

(g) Periodic student report requirements;

(h) Annual program monitoring procedures and requirements;

(i) Starting date and duration of contract;

(j) Program day and description of student's program;

(k) Charges and reimbursement--Billing and payment procedures;

(l) Total contract cost;

(m) Contract review;

(n) Disposition of materials and equipment upon termination;

(o) School district and other public agency's responsibility for compliance with due process, individualized education program, and yearly review and determination of placement requirements;

(p) Contractor's policies and procedures covering:

(i) Nondiscrimination;

(ii) Care of student(s) in emergencies;

(iii) Fire drills;

(iv) Personnel policies;

(v) Staff duties; and

(vi) Board of directors' duties and functions;

(q) Other contractual elements that may be necessary to assure compliance with state and federal rules; and

(r) Signatures of authorized school and contractor officials.

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[Statutory Authority: Chapter 28A.155. 95-21-055 (Order 95-11), § 392-172-224, filed 10/11/95, effective 11/11/95.]

WAC 392-172-226 Residential educational services. If the delivery of services in a public or private residential educational program is necessary to provide special education and related services to a special education student, the program, including nonmedical care and room and board, must be at no cost to the parents of the student. Nothing in this chapter relieves an insurer or similar third party (public or private) from an otherwise valid obligation to provide or to pay for services provided to a special education student. Nothing is this chapter relieves any participating agency of the responsibility to provide or pay for any service that the agency would otherwise provide to any special education student who meets the eligibility criteria of that agency.

[Statutory Authority: Chapter 28A.155. 95-21-055 (Order 95-11), § 392-172-226, filed 10/11/95, effective 11/11/95.]

Private Schools Provisions

WAC 392-172-228 Out-of-state agencies. In the event the resident school district or other public agency is unable to contract with another district or other public agency, or a nonpublic agency, or an appropriate state agency, the district or other public agency may contract with an out-of-state educational program.

Contractual arrangements for an out-of-state educational program must be approved by the superintendent of public instruction or designee prior to the placement of the students in that program. The school district or other public agency shall be responsible for:

(1) Determining that no appropriate in-state service option is available and for making the decision that the student should be placed in an out-of-state program;

(2) Determining that the out-of-state educational program is appropriately licensed or approved by that state's authorities and that the delivery of services will result in an appropriate education for the student; and

(3) Contracting with the out-of-state agency pursuant to the requirements of WAC 392-172-220 through 392-172-224.

The school district or other public agency may petition the superintendent of public instruction or designee for state and/or federal special education funds to provide an educational program with an out-of-state agency.

[Statutory Authority: Chapter 28A.155. 95-21-055 (Order 95-11), § 392-172-228, filed 10/11/95, effective 11/11/95.]

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Policies/Procedures
Spec. Education

5. The meeting will include reviewing each child's program options, for the period commencing on the day a child turns three running through the remainder of the school year, and establishing a transition plan; and

6. If the child will participate in the district's preschool program under Part B of IDEA at age 3, an IEP consistent with this chapter will be developed and implemented by the child's third birthday. The district will provide the family with information on the eligibility and evaluation requirements under Part B of IDEA, including the parent's and district's rights regarding procedural safeguards.

Districts that provide preschool programs to nondisabled preschool children must meet the conditions of FAPE to students entitled to receive special education services. When such programs are not offered, districts or other agencies may provide opportunities in other programs such as:

1. Head Start;

2. Providing special education services to preschool special education children in private school programs for nondisabled children; and

3. Locating classes for preschool special education children in general elementary classes.

Home/Hospital Instruction

Home or hospital instruction shall be provided to special education students who are unable to attend school for an estimated period of four weeks or more because of physical disability or illness. The parent(s) of a student (or the adult student) shall request the services and provide a written statement to the district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks.

Home/hospital instructional services shall not be used for initial or on-going placement of otherwise eligible special education students. It shall be limited to placement as is deemed necessary to provide temporary intervention as a result of a physical disability or illness.

Contractual Services

The district shall contract with nonpublic and public school agencies for special education and related services for special education students when the district establishes that it cannot provide an appropriate education for the student with a disability within the district, another district or public agency.

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The district shall neither place a student in a nonpublic or public school agency nor award a contract to a nonpublic or public school agency until the nonpublic or public school agency has been approved by the state board of education.

In the event the district within which a student with a disability resides is unable to contract with another district or public agency, or a nonpublic or public school agency, or an appropriate state public agency, the parent (or adult student) and district may jointly petition the superintendent of public instruction or designee for state and federal special education funds to provide an educational program with a public agency in another state or Canada.

Contractual arrangements for an out-of-state educational program shall be approved by the superintendent of public instruction or designee prior to the student's placement in that program. The district shall be responsible for:

1. Determining that no appropriate in-state placement option is available and for making the decision that the student should be placed in an out-of-state program;
2. Determining that the out-of-state educational program is appropriately licensed or approved by that state's authorities and that placement will result in an appropriate education for the student; and
3. Contracting with the out-of-state public agency.

If a student with a disability has a FAPE available and the parents choose to place the student in a private school or facility, the District is not required by this section to pay for the student's education at the private school or facility. However, the District shall make services available to the student as provided under this section.

Disagreements between a parent and the district regarding the availability of a program appropriate for the student, and the question of financial responsibility, are subject to the due process procedures of this section.

Residential Placements

If placement in a public or private residential program is necessary to provide special education and related services to a student with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the student. Nothing in this section relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a student with a disability. Nothing in this section relieves any participating public agency of the responsibility to provide or pay for any service that the public agency would otherwise provide to any special education student who meets eligibility criteria of that public agency.

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Survey of Students with Disabilities in Out of State Placements: A Sample of States

APPENDIX D:

West Virginia Policies & Procedures Relating to Students with Disabilities in Out of State Placements

WV

INTERAGENCY AGREEMENT
Between
West Virginia Department of Education
and
West Virginia Department of Health and Human Resources
Re: Students with Disabilities

I. GOAL

The West Virginia Department of Education (WVDE) and the West Virginia Department of Health and Human Resources (DHHR) enter into this agreement to ensure that:

A. Each eligible school-age student with disabilities in the state is afforded the opportunity for a free appropriate public education and is also afforded those supportive services necessary to ensure the social, emotional, and physical development in accordance with West Virginia Board of Education Policy 2419: Regulations for the Education of Exceptional Students;

B. The financial and human resources of the state are used in a coordinated and efficient manner in supporting the education and development of each eligible student with disabilities; and

C. Each Agency can communicate in an effective manner and work collaboratively to provide services to all eligible school-age students with disabilities and establish specific agreements and procedures to carry out the responsibilities established in this Agreement.

II. SCOPE AND DURATION

This Agreement applies to both Agencies and all service providers and subgrantees which provide services to school-age youth with disabilities or supervise the provision of services, under the supervision or administrative control of any Agency.

This Agreement is binding for the period beginning with the full approval of the FY 94-96 State Plan for Part B of the Individuals with Disabilities Education Act (IDEA-B) and when the Agreement is signed by each Agency, and ending with the submission of the FY-97 IDEA-B State Plan. The Agreement must be reaffirmed with the FY-97 submission of the IDEA-B State Plan or amended, as appropriate. Either Agency may propose an amendment to this Agreement. This Agreement may only be amended with the consent of both Agencies.

III. BACKGROUND AND AUTHORITY

Public Law 99-457 mandates that each state, as a condition of receipt of IDEA-B, develop and implement interagency agreements to define the financial responsibility of each relevant state agency for providing all eligible school-age students with disabilities the opportunity for a free appropriate public education and to establish a procedure for resolving interagency disputes regarding such responsibilities. WV Code §18-20-5 establishes WVDE's general administrative responsibility and authority for assuring the education of all eligible school-age students with disabilities in accordance with state and federal laws.

In addition to the need for this Agreement created by law, practical problems confronted by each Agency in attempting to coordinate the provision of services to all eligible school-age students with disabilities necessitate this Agreement. Allocation of cost and direct responsibility for educational programming and the resolution of interagency disputes are fundamental to the consistent provision of quality services to all eligible school-age students with disabilities whose educational, social, and health care needs are often diverse.

IV. PURPOSES

The specific purposes of this Agreement are to:

A. Identify the financial responsibilities of each Agency to support the provision of services to all eligible school-age students with disabilities.

B. Establish formal procedures to resolve disputes over costs which may arise between agencies;

C. Ensure the provision of services to all eligible school-age students with disabilities during the resolution of such disputes; and

D. Require that all other sources of state and/or federal funds which could have been or were used to provide such services (e.g., physical therapy, occupational therapy, health care, diagnostic) prior to the passage of P.L. 94-142 in 1975 be used before IDEA-B funds are used to support the provision of such services.

V. FEDERAL PROGRAMS COORDINATED BY THIS AGREEMENT

The following federally funded programs are covered by this Agreement:

A. Part B of the Individuals with Disabilities Education Act (IDEA-B), formerly Part B of the Education of the Handicapped Act, as amended (EHA-B), and pertinent sections of the General Education Provisions Act;

B. Chapter 1 of The Education Consolidation and Improvement Act (ECIA);

C. The Carl D. Perkins Vocational Education Act, as amended;

D. Title XIX of the Social Security Act, including the School Based MEDICAID program, the program of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) and the Intermediate Care Facility (ICF) program;

E. The Maternal and Child Health and Handicapped Children's Services (CCS) operated under Title V of the Social Security Act;

F. The Supplemental Security Income Disabled Children's Program (SSI-D) established by Title VI of the Social Security Act;

G. Headstart Programs administered by the Agencies in this Agreement or their subgrantees;

H. The Rehabilitation Act of 1973, as amended; and

I. Title XX (social services programs) of the Social Security Act.

VI. DESCRIPTION OF AGENCY PROGRAMS

The following programs, which provide services to all eligible school-age students with disabilities in West Virginia are the subject of this Agreement:

A. Department of Education (WVDE)

WVDE, through participation in IDEA-B, has assured the U.S. Department of Education that it has established general supervisory authority over all educational programs administered within the state. "General supervisory authority" means that:

1. all programs serving school-age eligible students with disabilities within the state meet all requirements of IDEA-B;
2. all programs serving school-age eligible students with disabilities within the state meet state standards;
3. funds which support services to all eligible school-age students with disabilities, including state and local education funds, and funds under Title V, Title VI, Title XIX, and Title XX of the Social Security Act, will continue to provide any and all services provided by these funds prior to the passage of P.L. 94-142; and
4. no program will alter the eligibility requirements for participation in federal, state and local programs in order to increase the financial responsibility of agencies receiving IDEA-B funds.

WVDE is also responsible for the administration of funds received under the Carl D. Perkins Vocational Education Act, which contains specific provisions requiring the participation of eligible school-age students with disabilities.

B. Department of Health and Human Resources (DHHR)

DHHR provides services to children with disabilities ages birth through five years of age with partial support of these services provided with funds received under Title V of the Social Security Act (Maternal and Child Health) and under Chapter 1 of ECIA. Specifically, funds for preschool students in State Supported and State Operated Programs are granted through WVDE under Chapter 1 of ECIA (P.L. 89-313).

DHHR has responsibility for the provision of services to infants and toddlers and their families as the designated lead agency under the provisions of the Handicapped Infants and Toddlers Program.

DHHR has responsibility for the provision of residential and necessary support services to all eligible school-age students with disabilities in custody who must be placed in residential care facilities or alternate living arrangements (group homes, foster homes, private facilities in or out of the state) due to family or child welfare needs. Such placements or referrals for placement are made by courts of competent jurisdiction or by DHHR, itself. Presently, several out-of-state placements of eligible school-age students with disabilities are supported by DHHR. In a number of these cases, students have recently, or soon will be, returned to in-state programs. For students currently out-of-state to be returned to West Virginia, as well as in-state students who are referred out-of-county for placement, the residential placement decision must be processed through an Interagency Planning and Placement Committee (IPPC) or other interagency service plan meeting involving the agencies responsible for implementing the child and family's service plan. In the case of emergency placements where a student's safety is at risk, DHHR agrees to notify the receiving county school district within 48 hours following the placement. In non-emergency placements, DHHR agrees to notify the receiving school district of intent to place as soon as the placement decision is determined, within a reasonable amount of time, prior to actual placement.

VII. GENERAL SUPERVISION

WV Code §18-20-5 establishes WVDE's general supervisory responsibility and authority for the education of all eligible school-age students with disabilities and to assure that their education be in accordance with all applicable state and federal laws. This supervision extends to all students regardless of their placement location. Additionally, WV Code §18-3-3 establishes the state superintendent's general supervisory authority of schools. WV Code §18-3-4 documents the state superintendent of schools authority to enforce and give effect to all provisions of this chapter and to the provisions of any other general or special laws pertaining to the school system or of any rule or direction of the state board of education. ,

VIII. FINANCIAL RESPONSIBILITY

The following policies and procedures shall be adhered to by each Agency:

A. Financial Responsibility

The method of administration and finance for any program may not limit the responsibility of providing a free appropriate public education. The financial responsibility of each Agency for the costs of special education and related services provided to eligible school-age students with disabilities shall be determined as follows:

1. For any student determined to be eligible for special education and related services by a county school district, the county school district where the student resides shall have responsibility for making available the opportunity for a free appropriate public education unless:

   a. state law or action(s) of a state or federal court of competent jurisdiction or a signed interagency agreement assign(s) that responsibility to another state agency, local jurisdiction or service provider.

   b. DHHR places students out-of-state, and in making placement fails to consult with and assure agreement by the county school district that the educational placement is in a facility that has approvable status in the state in which it is located and that the school or facility meets the requirements of the Individuals with Disabilities Education Act.

   c. An out-of-state placement is court ordered. In cases such as this, DHHR will pay residential costs and WVDE will pay educational costs in approvable facilities.

2. DHHR will continue to be responsible for payment of educational costs for those students placed out-of-state prior to the enactment of this agreement.

3. WVDE will be responsible for payment of educational costs for any additional students being placed out-of-state in approvable facilities following the enactment of this agreement and for assuring their education meets all state and federal requirements.

4. Neither WVDE nor DHHR is responsible for payment of costs if a parent(s) unilaterally places a student in a private facility, either in or out-of-state. In these cases, the parent(s) maintains responsibility for payment unless a hearing decision or court order directs otherwise.

5. Neither participant in this Agreement shall alter or limit the eligibility of any student for participation or entitlement under any program administered by the participant as a result of the financial obligations imposed by P.L. 99-457 and participation in this Agreement.

6. For purposes of carrying out their respective responsibility under Paragraph 1 of this section, all Agencies will take appropriate steps to ensure that services which were or could have been provided under the federal programs coordinated by this Agreement (as defined in Section V above) prior to the enactment of EHA-B (November 1975) will be provided to any eligible student.

7. Each Agency recognizes the eligibility of county school districts to directly apply for and administer, through direct or contracted services, program funds as required under Titles V, VI, XIX and XX of the Social Security Act. Such application for "vendor" status under these programs would be subject to established state Agency procedures and standards for the granting of vendor status to any public agency or private organization in the state.

B. Dispute Resolution

WVDE and DHHR recognize the possibility that, during the administration of this Agreement, disputes might arise regarding financial responsibility for services to an individual student or group of students. It is mutually recognized that all attempts shall be made to resolve the dispute at the lowest level possible. It is recognized that a local education agency official and/or a local DHHR official (either official determined at the local level) can bring an issue to the dispute resolution committee if disagreement arises. If a dispute cannot be resolved at the level of inception (Level I) both parties shall agree to send a written statement of the problem(s) causing the dispute to the Director of the Office of Special Education (WVDE) and to the Director of the Office of Social Services (DHHR) who shall jointly attempt to resolve the dispute (Level II). If the dispute cannot be resolved at that level, the Assistant State Superintendent (WVDE) shall meet with the Commissioner of the Bureau of Human Resources (DHHR) to resolve the dispute (Level III). Any unresolved disputes at Level III will be referred to the State Superintendent of School (WVDE) or designee and the Secretary of the Department of Health and Human Resources (DHHR) or designee for final resolution (Level IV).

IX. ENACTMENT

Upon the signature of the Chief Administrative Officer of each Agency in this Agreement, a representative(s) from each Agency will be selected and will cooperatively establish procedures governing its operation and the implementation of this Agreement.

051/37641

State Superintendent of Schools
West Virginia Department of Education

10/1/93
Date

Secretary
West Virginia Department of Health and
Human Resources

6/29/93
Date

37641

MID-SOUTH
REGIONAL RESOURCE CENTER

Survey of Students with Disabilities in Out of State Placements: A Sample of States

APPENDIX E:

Survey Respondents

SURVEY RESPONDENTS

ALABAMA	Terry Longest Alabama Department of Education Division of Special Education Services 50 North Ripley Street Gordon Persons Building Montgomery AL 36130-3901	(304) 242-8394
COLORADO	Myron Swize Colorado Department of Education Special Education Services Unit 201 East Colfax Avenue Denver CO 80203	(303) 866-6697
FLORIDA	Shan Goff Florida Department of Education Bureau for Education of Exceptional Students Florida Education Center 325 West Gaines Street, Suite 614 Tallahassee FL 32399-0400	(904) 488-1570
IDAHO	Nolene Weaver Idaho Department of Education Special Education Section PO Box 83720 Boise ID 83720-0027	(208) 334-3940
ILLINOIS	Mike Ross Illinois State Board of Education Center on Policy, Planning & Resources Mail Code E-216 100 North First Street Springfield IL 62777-0001	(217) 782-5589
INDIANA	Carol Eby Indiana Department of Education Division of Special Education Room 229 State House Indianapolis IN 46204-2798	(317) 232-0588
IOWA	Dee Ann Wilson Iowa Department of Public Instruction Bureau of Special Education Grimes State Office Building Des Moines IA 50319-0146	(515) 281-5766
KANSAS	Judy Cutsinger Kansas State Board of Education Special Education Outcomes Team 120 SE 10th Avenue Topeka KS 66612-1182	(913) 296-7780
MARYLAND	Richard Gamble Maryland Department of Education Division of Special Education Nonpublic Schools Branch 200 West Baltimore Street Baltimore MD 21201-2595	(410) 767-0264
MICHIGAN	Jackie Begg Michigan Department of Education Special Education Services PO Box 30008 Lansing MI 48909-7508	(517) 335-0445

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SURVEY RESPONDENTS

MISSISSIPPI	Sharon Hopkins Mississippi State Department of Education Bureau of Special Services PO Box 771 Jackson MS 39205-0771	(601) 359-3498
MISSOURI	Melodie Friedebach Missouri Dept. of Elementary & Secondary Education Special Education Programs PO Box 480 Jefferson City MO 65102-0480	(573) 751-2965
NEBRASKA	Adria Bace Nebraska Department of Education Special Education Office 301 Centennial Mall South PO Box 94987 Lincoln NE 68509-4987	(402) 471-2471
NEW HAMPSHIRE	Steven Gordon New Hampshire Department of Education Bureau for Special Education Services 101 Pleasant Street Concord NH 03301-3860	(603) 271-3750
NEW MEXICO	Sydney Gould New Mexico Department of Education Special Education 300 Don Gaspar Avenue Santa Fe NM 87501-2786	(505) 827-6541
OHIO	John Saylor Ohio Department of Education Division of Special Education 933 High Street Worthington OH 43085-4087	(614) 466-2650
PENNSYLVANIA	Jill Lichty Pennsyvlania Department of Education Bureau of Special Education 333 Market Street Harrisburg PA 17126-0333	(717) 772-3745
SOUTH CAROLINA	Ellen Carruth South Carolina Department of Education Office of Programs for Exceptional Children Rutledge Building, Room 505 1429 Senate Street Columbia SC 29201	(803) 734-8882
UTAH	Steve Kukic Utah State Office of Education Special Education Services Unit 250 East 500 South Salt Lake City UT 84111-3204	(801) 538-7706
VERMONT	Nancy Thomas Vermont Department of Education Division of Special Education 120 State Street State Office Building Montpelier VT 05620-2501	(802) 828-5121

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SURVEY RESPONDENTS

VIRGINIA	Gloria Dalton/Anthony Faina Virginia Department of Education Division of Special Education PO Box 2120 Richmond VA 23216-2120	(804) 225-2700
WASHINGTON	Don Hanson Washington Department of Public Instruction Special Education Section Old Capitol Building Olympia WA 98504-0001	(360) 753-6733
WEST VIRGINIA	Laura Maddox/Susan Lattimer West Virginia Department of Education Office of Special Education Programs & Assurances 1800 Kanawha Boulevard Capitol Complex, Building 6, Room B304 Charleston WV 25305	(304) 558-2696
WISCONSIN	Paul Halverson Wisconsin Department of Public Instruction Division of Learning Support 125 South Webster PO Box 7841 Madison WI 53707-7841	(608) 266-1781

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Survey of Students with Disabilities in Out of State Placements: A Sample of States

APPENDIX F:

Mississippi Policies & Procedures Relating to Students with Disabilities in Out of State Placements

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The State Department of Education may also provide for the payment of such financial assistance in installments and for proration of such financial assistance in the case of children attending a school or clinic for less than a full school session and, in the event that available funds are insufficient, may allocate the available funds among the qualified applicants and local school districts by reducing the maximum assistance provided for herein.

Any monies provided an applicant under Sections 37-23-61 through 37-23-75 shall be applied by the receiving educational institution as a reduction in the amount of the tuition paid by the applicant, and the total tuition paid by the applicant shall not exceed the total tuition paid by any other child in similar circumstances enrolled in the same program in that institution. However, this limitation shall not prohibit the waiving of all or part of the tuition for a limited number of children based upon demonstrated financial need, and the State Department of Education may adopt and enforce reasonable rules and regulations to carry out the intent of these provisions.

SOURCES: Laws, 1993, ch. 602, § 9; 1994, ch. 419, § 1, eff from and after July 1, 1994.

Amendment Note—

The 1994 amendment authorized school districts to recommend other placement of certain exceptional children and pooling of funds from other state agencies in order to provide certain services for seriously emotionally disturbed children.

EXCEPTIONAL CHILDREN UNDER STATE GUARDIANSHIP

§ 37–23–77. Education of exceptional children under guardianship of Department of Human Services.

In the event that a child, as defined in Sections 37-23-61 and 37-23-63, is under the legal guardianship of the State Department of Human Services, or any other state agency, and for whom no foster parents are available, funds available pursuant to Section 37-23-1 et seq. may be used to provide for the education of the child in an institution approved by the Department of Human Services and the State Department of Education. However, provided the educational services needed by the child are available in a state funded institution, these funds shall not be used to pay for educational services at that institution. At any such time a child is taken out of a school setting and placed under the custody of the Department of Human Services, the department shall immediately notify the State Department of Education and apply for funds for such child's educational services pursuant to Section 37-23-1 et seq. and the State Department of Education shall respond to such application within ten (10) working days. The special education and related services provided for this child shall be provided in compliance with State Department of Education regulations. The State Department of Education shall promulgate such regulations as are necessary to implement this section.

The State Department of Education shall require that the special education and related services provided for the children under this section be designed to provide individualized appropriate special education and related services that enable a child to reach his or her appropriate and uniquely designed goals for success.

SOURCES: Laws, 1994, ch. 550, § 1; 1995, ch. 372, § 5, eff from and after July 1, 1995.

Amendment Note—

The 1994 amendment substituted "State Department of Human Services" for state department of public welfare", and added provisions requiring the department to immediately notify the Department of Education when a child is removed from school by the Department of Human Service.

The 1995 amendment added the second paragraph requiring an individualized program for each child.

Cross references—

Exceptional child, defined, see § 37-23-3.

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